NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on **Wednesday, February 27, 2019** in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – *A public body has a legitimate interest in conducting orderly meetings. IVGID may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

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

The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.

E. REPORTS TO THE BOARD OF TRUSTEES*

1. Verbal update on Diamond Peak's Ski Season to date given by Diamond Peak General Manager Mike Bandelin

F. CONSENT CALENDAR (*for possible action)*

Excerpt from Policy 3.1.0, Conduct Meetings of the Board of Trustees

0.15 **Consent Calendar**. In cooperation with the Chair, the General Manager may schedule matters for consideration on a Consent Calendar. The Consent Calendar may not include changes to user rates or taxes, adoption or amendment of ordinances, or any other action which is subject to a public hearing. Each consent item shall be separately listed on the agenda, under the heading of "Consent Calendar." A memorandum will be included in the packet materials for each Consent Calendar item. The memorandum should include the justification as a consent item in the Background Section. Any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting.

THERE ARE NO ITEMS ON THE CONSENT CALENDAR FOR THIS MEETING.

G. GENERAL BUSINESS (*for possible action)*

1. Review, discuss, and possibly provide input and guidance on legislative matters for the 2019 State of Nevada Legislative Session following a verbal presentation on legislative matters provided by Tri-Strategies representative(s)

2. Approval of Diamond Peak's Season Ski Pass Offerings for the 2020 Ski Season (Requesting Staff Member: Diamond Peak General Manager Mike Bandelin) ***– pages 5 - 9***

3. Receive, review, discuss and possibly provide direction in relation to a presentation and preview of new and/or enhanced initiatives for the 2019 beach season (Requesting Staff Member: Director of Parks and Recreation Indra Winquest) ***– pages 10 - 11***

4. Review, Discuss, and Authorize Chair and Legal Counsel to sign the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Basin Storage Improvements Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595 (Requesting Staff Member: Director of Public Works Joe Pomroy) ***– pages 12 - 61***

5. Review, Discuss, and Authorize Chair and Legal Counsel to sign the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Export Phase II Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595 (Requesting Staff Member: Director of Public Works Joe Pomroy) ***– pages 62 - 113***

6. Review, discuss, and possibly provide direction regarding the offer from Washoe County School District to purchase the old elementary school property (771 Southwood Boulevard) for $2,000,000. (Requesting Staff Member: District General Manager Steve Pinkerton) ***– pages 114 - 117***

7. Introduction to the District's 2019/2020 Budgets (Requesting Staff Members: District General Manager Steve Pinkerton, Director of Finance Gerry Eick, Director of Parks and Recreation Indra Winquest) ***– page 118***

8. Review, discuss and possibly take action on Title 5 of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong) ***– pages 119 - 191***

H. DISTRICT STAFF UPDATE *(for possible action)*

1. General Manager Steve Pinkerton ***– pages 192 - 196***

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

1. Regular Meeting of February 6, 2019 ***– pages 197 - 325***

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

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

L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see **Public Comment Advisory Statement** above.

NOTICE OF MEETING

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR *(for possible action)* **– *pages 326 - 327***

N. ADJOURNMENT *(for possible action)*

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, February 22, 2019 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of February 27, 2019) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley's Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID's Recreation Center
7. The Chateau at Incline Village

/s/ Susan A. Herron, CMC
Susan A. Herron, CMC
District Clerk (e-mail: sah@ivgid.org/phone # 775-832-1207)

***Board of Trustees**: Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.*

***Notes:** Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.*

IVGID'S agenda packets are now available at IVGID's web site, www.yourtahoeplace.com; go to "Board Meetings and Agendas". A hard copy of the complete agenda packet is also available at IVGID's Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.

**NRS 241.020(2) and (10): 2.Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting ...10. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.*

MEMORANDUM

TO: Steve Pinkerton
General Manager

FROM: Mike Bandelin
Diamond Peak Ski Resort General Manager

SUBJECT: Review, discuss and possibly approve implementation of a three-tiered Season Pass sales initiative and rate structure for Diamond Peak Ski Resort's 2019-2020 ski season

STRATEGIC PLAN: Long Range Principle #2 - Finance

DATE: February 19, 2019

I. RECOMMENDATION

Staff recommends that the Board of Trustees makes a motion to:

1. Approve a three-tiered season pass pricing structure, effective March 16, 2019 for Diamond Peak Ski Resort's 2019/2020 season passes including an Early Bird (Tier 1) through April 30, 2019, a Preseason (Tier 2) May 1 – October 31, 2019, and a Regular Season (Tier 3) rate, beginning November 1, 2019 through the end of the ski season in 2020.

2. Approve a Non Resident ski season pass price increase of $5.00 to all pass products included in the Preseason (Tier 2) category and a $10.00 increase to all pass products included in the Regular Season (Tier 3) category.

II. District Strategic Plan

The Ski Season Pass Sale Program supports the Long Range Principle #2 Finance; *The District will ensure fiscal responsibility and sustainability of service capacities by maintaining effective financial policies for operating budgets, fund balances, capital improvements, and debt management.*

III. BACKGROUND

For the past three years, the District has initiated an approved Season Pass sale in mid-March. This was in response to other resorts offering Season Pass sales early and the focus on capturing sales while people are still excited about the current season and looking forward to next year. This strategy proved successful as shown in the table below.

Season Passes Sold	2015/2016 7/1/15 - 1/31/16	2016/2017 3/19/16 - 1/31/17	2017/2018 3/21/17 - 1/31/18	2018/2019 3/11/18 - 1/31/19
Total	3,112	3,880	4,711	4,947
Resident	1,977	2,235	2,592	2,412
Non Resident	1,135	1,645	2,119	2,535

It is again proposed to initiate Fiscal Year 2019/2020 Diamond Peak season pass sales on or around March 16, 2019, and continue with the three-tiered pricing structure for season passes as adopted last season, with Early Bird (Tier 1) rates available through April 30, 2019; Preseason (Tier 2) rates available from May 1 – October 31, 2019; and Regular Season (Tier 3) rates available from November 1, 2019 through the end of the ski season 2020.

The recommendation is also proposing IVGID Picture Pass Holder ski season pass rate structure remain consistent with no change from the 2018-2019 pass categories.

For Non-Resident pass products, Staff is proposing a $5.00 increase to the season pass products within the Preseason (Tier 2) and a $10 increase to products within Regular Season (Tier 3) category.

The table below identifies a comparison of the proposed 2019-2020 Season Pass pricing tiers along with the approved 2018-2019 Season Pass pricing tiers.

2019-20 Proposed Diamond Peak Season Pass Rates	March 16 - April 30, 2019 Tier 1	May 1 - October 31, 2019 Tier 2	November 1, 2019 to end of ski season 2020 Tier 3
Picture Pass Holder Full Pass			
Adult (24-64)	$289	$319	$349
Youth (13-23)	$139	$159	$189
Child (7-12)	$109	$129	$149
Senior (65-69)	$109	$119	$149
Super Senior (70-79)	$29	$39	$49
6 & under / 80+	Free	Free	Free
Picture Pass Holder Midweek Pass			
Adult (24-64)	$219	$249	$299
Youth (13-23)	$109	$129	$149
Senior (65-69)	$89	$99	$119
Super Senior (70-79)	$20	$30	$40
Non-Resident Full Pass			
Adult (24-64)	$399	$454	$489
Youth (13-23)	$229	$254	$269
Child (7-12)	$159	$184	$209
Senior (65-69)	$159	$184	$209
Super Senior (70-79)	$139	$154	$179
6 & under / 80+	Free	Free	Free
Non-Resident Midweek Pass			
Adult (24-64)	$299	$324	$349
Youth (13-23)	$199	$214	$229
Senior (65-69)	$139	$154	$179
Super Senior (70-79)	$119	$134	$159

**The IVGID Board of Trustees allows management to adjust prices to accomplish yield management provided the rate offered to the public is above the IVGID Picture Pass Holder rate.*

2018-19 Diamond Peak Season Pass Rates	March 15, 2018 - April 30, 2018 Tier 1		May 1, 2018 - October 31, 2018 Tier 2		November 1, 2018 - March 16, 2019 Tier 3
Picture Pass Holder Full Pass					
Adult (24-64)	$289		$319		$349
Youth (13-23)	$139		$159		$189
Child (7-12)	$109		$129		$149
Senior (65-69)	$109		$119		$149
Super Senior (70-79)	$29		$39		$49
6 & under / 80+	Free		Free		Free
Picture Pass Holder Midweek Pass					
Adult (24-64)	$219		$249		$299
Youth (13-23)	$109		$129		$149
Senior (65-69)	$89		$99		$119
Super Senior (70-79)	$20		$30		$40
Non-Resident Full Pass					
Adult (24-64)	$399		$449		$479
Youth (13-23)	$229		$249		$259
Child (7-12)	$159		$179		$199
Senior (65-69)	$159		$179		$199
Super Senior (70-79)	$139		$149		$169
6 & under / 80+	Free		Free		Free
Non-Resident Midweek Pass					
Adult (24-64)	$299		$319		$339
Youth (13-23)	$199		$209		$219
Senior (65-69)	$139		$149		$169
Super Senior (70-79)	$119		$129		$149

**The IVGID Board of Trustees allows management to adjust prices to accomplish yield management provided the rate offered to the public is above the IVGID Picture Pass Holder rate.*

IV. FINANCIAL IMPACT AND BUDGET

If the provided recommendation is approved, the rate adjustment for Non Resident pass products may provide $5,000 - $10,000 in additional season pass revenue within the 2019-2020 fiscal year.

V. COMMENTS

To remain consistent with previous Community Services Memorandums of Recommendations to Key Rates, it should be noted that the IVGID Board of Trustees allows management to adjust prices to accomplish yield management provided the rate offered to the public is above the IVGID Picture Pass Holder rate.

VI. BUSINESS IMPACT

This item is not a "rule" within the meaning of NRS, Chapter 237, and does not require a Business Impact Statement.

VII. ALTERNATIVES

Alternatives include a direction to make no changes to the Non Resident season pass product pricing for the 2019-2020 pass program and not approve a three-tiered season pass pricing structure beginning on or about March 16, 2019.

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Indra Winquest
Director of Parks & Recreation

SUBJECT: Receive, review, discuss and possibly provide direction in relation to a presentation and preview of new and/or enhanced initiatives for the 2019 beach season

STRATEGIC PLAN: Long Range Principal #2 – Finance
Long Range Principle 4 – Service
Long Range Principal 5 – Assets and Infrastructure
Long Range Principal 6 – Communication

DATE: February 27, 2019

I. RECOMMENDATIONS

That the Board of Trustees receive, review, discuss and possibly provide direction related to a presentation and preview of new and/or enhanced initiatives for the 2019 Beach Season.

II. DISTRICT STRATEGIC PLAN

Long Range Principal #2 – Finance
Long Range Principle 4 – Service
Long Range Principal 5 – Assets and Infrastructure
Long Range Principal 6 – Communication

III. BACKGROUND

On November 13, 2018, during the 2018 Beaches season wrap up, several potential enhancements for the 2019 Beaches season were highlighted. Additionally, Staff informed the Board that more information would be provided leading up to the 2019-20 Budget discussions and presentations.

IV. FINANCIAL IMPACT AND BUDGET

None at this time. Staff will be providing financial analysis as it relates to new or enhanced initiatives during upcoming 2019-20 budget presentations.

V. ALTERNATIVES

Not applicable.

VI. COMMENTS

Staff's presentation will provide insight into the suggested enhancements and new initiatives as they relate to operations at the District's beaches. These initiatives are based on gaps in existing service levels, safety, dynamic pricing and utilization. The Board of Trustees will have an opportunity to ask questions, discuss options, and provide necessary direction if desired. All feedback and potential direction will be factored into the budget process and will be presented during upcoming budget presentations.

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Joseph J. Pomroy, P.E.
Director of Public Works

Charley Miller, P.E.
Engineering Manager

SUBJECT: Review, Discuss, and Authorize Chair and Legal Counsel to sign the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Basin Storage Improvements Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

STRATEGIC PLAN: Long Range Principle 5 – Assets and Infrastructure

DATE: February 15, 2019

I. RECOMMENDATION

That the Board of Trustees moves to authorize Chair and Legal Counsel to execute the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Basin Storage Improvements Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

II. DISTRICT STRATEGIC PLAN

Long Range Principle #5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- Complete condition analysis and project scoping for the Effluent Export Project – Phase II and continue to pursue project partnerships and federal funding to reduce District costs.

III. BACKGROUND

Incline Village General Improvement District (IVGID) currently owns, operates and maintains an existing earthen basin at its water resource recovery facility (WRRF) to temporarily store WRRF effluent for brief durations. The existing basin has a storage capacity of approximately 2 million gallons (MG) and is unlined and not permitted for use by NDEP. The Effluent Export Project Phase II includes the lining of the effluent pond at the WRRF for near and long term purposes. The scope of work that also includes a cost estimate for this project follows this memorandum. The District now has the opportunity to submit this project to the United States Army Corps of Engineers (USACE) for a Design and Construction Assistance Agreement under Section 595 of the Water Resources Development Act 1999 and its amendments.

The District has had a long positive working relationship with the USACE in funding and constructing infrastructure and environmental improvement projects since 2002. The District has received $15.5 million dollars through the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016) Section 595 Program for the Effluent Export Project. The WIIN Act was formerly called the Water Resources Development Act. The District has also received $6 million from the Lake Tahoe Restoration Act Section 108 Program for funding Environmental Restoration Projects that was matched with $2 million of State of Nevada Funding for Mill, Incline and Third Creeks Restoration Projects.

The District and the District's Legislative Advocate, worked with the Nevada Delegation and other western states on raising the authorization of the Section 595 Program of the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016). Nevada will be collaborating on Rural Section 595 with five other states, New Mexico, Montana, Wyoming, Idaho and Utah, who already have projects which qualify under Section 595. The new Section 595 Program increased the authorization limit by $100 million over the previous limit to allow new annual appropriations through the Federal Budget process.

New language was inserted into Section 595 that clarifies that funding caps do not apply to individual States and that unspent monies can be re-allocated to priority projects in any state. This was an extremely important piece of language to have added because the US Army Corps was not open to discussing a new Project Partnership Agreement because they had interpreted that Nevada had spent their allocation of funds under Section 595.

In 2017, Staff and Marcus Faust worked with the US Army Corps staff in Sacramento and US Army Corps staff in Washington on bulletins describing this new language change. This provided the opportunity for the District to pursue a new Project Partnership Agreement with the USACE.

V. FINANCIAL IMPACT AND BUDGET

The Effluent Storage Basin Improvements is included in the District's Capital Improvement Budget under the Effluent Export Line – Phase II Project. The Design and Construction Assistance Agreement provides up to 75% reimbursement of qualifying expenses as specified in the agreement. The current scope of work has the following project budget for the Effluent Storage Basin Improvements and shows the cost share components.

Estimated Project Total		**$2,710,000**
USACE Share	75%	$2,032,500
IVGID Share	25%	$677,500

VI. ALTERNATIVES

None proposed.

VII. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
ENGINEERING DIVISION TECHNICAL MEMORANDUM

TO: LAURA WHITNEY/USACE SACRAMENTO DISTRICT

FROM: JOSEPH J. POMROY, P.E./IVGID

SUBJECT: IVGID EFFLUENT STORAGE BASIN IMPROVEMENTS PROJECT SCOPE OF WORK

DATE: FEBRUARY 15, 2019

BACKGROUND

The Incline Village General Improvement District (IVGID or District) operates a wastewater collection, treatment, and effluent export system that serves the communities of Incline Village and Crystal Bay, NV and the Nevada State Parks (Sand Harbor, Spooner and Memorial Point) located at Lake Tahoe. A critical component of this operation is the 2.4 million gallon primary effluent storage basin located adjacent to the wastewater resource recovery facility (Plant). This storage basin was designed to provide automated back-up effluent storage in the event the Plant's 500,000 gallon effluent storage tank fills to capacity. By lining the storage basin, it will allow for effluent storage during emergency situations and planned effluent pipeline repair and replacement construction projects. The lining will also eliminate the need to retreat this effluent through the Plant, speeding recovery from the incident. Depending on the time of year and associated influent flows at the Plant, the primary effluent storage basin can provide between 1.6 and 3.2 days of storage. The primary storage basin also ensures there is adequate storage capacity to accommodate a multiple day power outage that interrupts Plant operations.

As a condition of IVGID's current operating permit with the Nevada Department of Environmental Protection (NDEP), the District is no longer allowed to utilize the primary effluent storage basin for storage because it is unlined. This significantly hampers the District's ability to conduct planned maintenance of the effluent export system and puts IVGID at risk of a discharge of effluent to the waters of Lake Tahoe in the event of a significant emergency.

EFFLUENT STORAGE IMPROVEMENTS PROJECT

Analysis conducted as a component of the IVGID Effluent Export Project Predesign Report July 2004 indicates that, due to the regulatory limitations associated with the use of the Primary Effluent Storage Basin, there is insufficient operational storage available to IVGID to provide adequate redundancy and reliability of the effluent export system.

The following improvements are proposed to be completed to allow routine use of the Primary Effluent Storage Basin:

1) Clear, grub, and re-grade the Primary Effluent Storage Basin.
2) Construct improvements to allow impervious containment of effluent within the Primary Effluent Storage Basin.

3) Install fencing around the basin periphery for security and safety.
4) Construct mechanical improvements to allow the Primary Effluent Storage Basin to be operated in conjunction with the Effluent Storage Reservoir.
5) Replace and automate existing piping, pumping system, and controls to allow unattended operation of the Primary Effluent Storage Basin.

ENVIRONMENTAL ASSESSMENT

An Environmental Assessment is anticipated to be required for this project. The USACE will be the lead agency and perform all field work and document composition with assistance from the District staff.

As a reference, the District completed an Environmental Assessment to allow previous effluent export system improvements. The Environmental Assessment was completed in October 2004 with a Finding of No Significant Impact, issued by the USACE. The area of impact for the recommended improvements to the Primary Effluent Storage Basin is contained within the Environmental Assessment's Project Area and studied as a component of the project analysis.

PROJECT WORK TO DATE

The following work has been completed or is underway to allow implementation of the Primary Effluent Storage Basin improvements:

- Expansion of the access road around the wastewater treatment plant to improve ingress/egress to allow construction of improvements to the Primary Effluent Storage Basin. This work included the purchase of an adjacent parcel.
- A contract with a consulting engineer is currently underway to complete pre-design analysis that evaluates alternatives, makes recommendations, completes preliminary design, and develops construction cost estimates to implement the above listed effluent storage recommendations. This work was completed in September 2018.

CONCEPTUAL PROJECT MILESTONES

- Complete pre-design analysis – September 2018
- Final design and environmental entitlement – March 2019 - September 2019
- Project bidding and contract award – December 2019 - January 2019
- Project construction – July 2020 - October 2020

CONCEPTUAL PROJECT BUDGET

Project Component	Estimated Cost
Site Civil	$200,000
Reservoir Improvements	$1,200,000
Piping, Mechanical, & Controls	$275,000
Subtotal	$1,675,000
Contingency (20% of Subtotal)	$335,000
Construction Estimate	**$2,010,000**
Pre-Design	$50,000
Final Design	$250,000
Environmental Documentation	$75,000
Construction Administration & Management	$200,000
IVGID Project Administration & Management	$125,000
Estimated Project Total	**$2,710,000**
USACE Share (75%)	$2,032,500
IVGID Share (25%)	$677,500

ESTIMATED FISCAL YEAR(FY) BUDGET

FY 2019	Estimated Cost
Pre-Design, Final Design,	$300,000
Environmental Documentation	$75,000
IVGID Project Administration & Management	35,000
Subtotal	$410,000
FY 2020	**Estimated Cost**
Construction	$2,010,000
Construction Administration & Management	200,000
IVGID Project Administration & Management	90,000
Subtotal	$2,300,000
Total	**$2,710,000**

PROJECT LOCAL SHARE

IVGID presently has sufficient funds in Utility Fund Reserves to provide the necessary project local share.

SECTION 595 – WRDA 1999, AS AMENDED

ENVIRONMENTAL INFRASTRUCTURE

IDAHO, MONTANA, RURAL NEVADA, NEW MEXICO, RURAL UTAH, AND WYOMING

MODEL AGREEMENT FOR DESIGN AND CONSTRUCTION ASSISTANCE

(WORK PERFORMED BY NON-FEDERAL SPONSOR)

OCTOBER 25, 2005
REVISED - NOVEMBER 19, 2005
REVISED - JULY 15, 2009

APPLICABILITY. – The attached model agreement is one of six models for the provision of environmental assistance to non-Federal interests in Idaho, Montana, rual Nevada, New Mexico, rural Utah, and Wyoming pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (Section 595) projects. The following descriptions of the six models are provided to assist in determining the correct model to be used for your project. None of the models discussed below should be used for the provision of environmental infrastructure assistance pursuant to any other authority. Models for the provision of environmental infrastructure assistance pursuant to other authorities can be found in the approved model section of the PCA Web page. If there is no approved model posted in the approved model section of the PCA Web page that is applicable to your particular environmental infrastructure authorization, the District Project Delivery Team should consult with the appropriate HQ RIT for guidance on drafting the appropriate agreement.

***Section 595 Non-Federal Design and Construction* – The attached model should be used for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.**

***Section 595 Non-Federal Design* – Use only for Section 595 projects when the**

sponsor requests design for the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

Section 595 Non-Federal Construction – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

Section 595 Federal Design – Use only for Section 595 projects when the sponsor requests design for the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

Section 595 Federal Construction – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the construction. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

Section 595 Federal Design and Construction – Use only for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design or construction. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.

NOTES. – The following pages (iv – xi) contain numbered notes to assist in drafting an agreement for your project using this model. Throughout the model agreement, there are references to the numbered notes (example: [SEE NOTE – 7]) to direct you to the appropriate note that provides explanation and guidance on use of optional language or

information required to fill in the blanks. Several of the notes are general in nature and should be reviewed and discussed with the sponsor during preparation of the draft agreement for your project.

OPTIONAL LANGUAGE. – The use of optional language allows the model to be applicable to a larger universe of projects. Many of the numbered notes (example: [SEE NOTE – 8]) require you to choose between multiple versions of language or to choose whether or not to include a paragraph, sentence, or phrase depending on the specifics of your project. In many cases optional language to address a concept, such as the sponsor performing non-Federal design and construction work, is required in numerous locations throughout the agreement. Each of these locations has been identified with numbered notes; however, it is important to ensure that, if the optional language addressing a certain concept is included in one location, it is also included in all other appropriate locations. Correct use of the optional language is not considered a deviation from the model.

BLANKS. – There are numerous locations where information specific to your project is required to fill in a blank. All of the blanks must be filled in, except the date in the first paragraph, prior to forwarding the agreement for review. Including the information required to fill in a blank is not considered a deviation from the model.

DEFINED TERMS SHOWN IN ITALICS. – Throughout the agreement the terms defined in Article I are shown in italics. Do not remove any of the *italics* from the agreement.

NOTES:

1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the agreement prior to forwarding for review. Reminder: Do not remove any of the *italics* from the agreement.

2. SECTION 595 TERMINOLOGY. - The Section 595 program envisions a wide array of different types of projects, some of which do not fit the typical definition of construction. As a result, the terms "construction" and "construct" used throughout the agreement, may not be appropriate for all types of projects. Therefore, substitution throughout the agreement as appropriate, of "implementation" and "implement" for projects consisting of non-structural type activities or "construction and implementation" and "construct and implement" for projects that are a combination of typical construction and non-structural type activities is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

3. MULTIPLE SPONSORS. - In the event there are two or more entities serving as the sponsors for the project, and there is no division of responsibilities between or among them, the agreement can be modified to identify all the entities collectively as the "Non-Federal Sponsors". However, it should be explained to all entities that the term "Non-Federal Sponsors" is construed to hold multiple sponsors jointly and severally responsible for compliance with all agreement obligations. The changes outlined below are required to identify all entities collectively as "Non-Federal Sponsors" and are not considered a deviation from the model.

A. Modify title to include name of each entity serving as a sponsor.

B. Modify first paragraph to include name of each entity serving as a sponsor. (Example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the "Non-Federal Sponsors"))

C. Change "Non-Federal Sponsor" to "Non-Federal Sponsors" throughout the agreement. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase "Non-Federal Sponsors" to reflect multiple sponsors (i.e. "its" to "their" or "assumes" to "assume", etc.).

D. On the signature page, a separate signature block will be required for each entity serving as a sponsor.

E. A separate Certificate of Authority will be required for each entity serving as a sponsor.

F. A Certification Regarding Lobbying must be signed by each signatory to the agreement.

4. GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. (Example: U.S. Army Engineer, Mobile District)

5. REFERENCE TO NON-FEDERAL SPONSOR. - Use "Non-Federal Sponsor", "Local Sponsor", "State", "County", "Commonwealth", "Territory" or other identifier as preferred by the sponsor in the parenthetical phrase and consistently throughout the agreement. This change is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

6. NON-FEDERAL SPONSOR REPRESENTATIVE. – Insert the title of the sponsor's representative signing the agreement. Do not include the name, only the title. The title shown for the sponsor's representative should match the title shown on the signature page and should be preceded by "the" or "its", as appropriate, to match the title of the sponsor's representative. (Example: the Mayor)

7. LOCATION OF PROJECT. – Choose, Option (1) if the project in the agreement is located in Idaho; Option (2) if the project in the agreement is located in Montana; Option (3) if the project in the agreement is located in rural Nevada; Option (4) if the project in the agreement is located in New Mexico; Option (5) if the project in the agreement is located in rural Utah; or Option (6) if the project in the agreement is located in Wyoming. Delete, in their entirety, the options not used.

8. PRE-AGREEMENT DESIGN WORK. – Only design performed by the sponsor prior to the effective date of the agreement should be considered as pre-Agreement design work. The reasonable costs of pre-Agreement design work shall be included in total project costs which have not been included in any other agreement for the project. If the sponsor wants to include costs for pre-Agreement design work, then all language on pre-Agreement design work should be included in the agreement. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the sponsor is requesting costs for pre-Agreement design work be included in total project costs.

9. DESCRIPTION OF THE PROJECT. – The input required for the description of the project is described below.

A. Describe the project features to be undertaken pursuant to this agreement in detail sufficient to avoid any confusion over what is or is not included. If the project features to be undertaken pursuant to this agreement are an element of a countywide or statewide environmental infrastructure system, only the features to be undertaken in this agreement should be included in the description of the project. Reminder: Do not include any lands, easements, rights-of-way, (LER) or relocations requirements of the project in this description.

B. The title and date of the decision document that describes the project should be included (such as Scope of Work, Feasibility Report with Engineering Appendix, General

Reevaluation Report, etc.). Also include the title of the approving official (such as Assistant Secretary of the Army (Civil Works); Chief of Engineers; Commander, _____ Division; or Commander, _____ District) and the date of approval. The civilian format for any dates included in the agreement should be used. (Example: January 22, 2004)

C. For any projects where the proposed work is reconstruction, repair, or rehabilitation of existing environmental infrastructure features, the sponsor must verify in writing if it was constructed through any other Federal program and whether OMRR&R was required and that the proposed reconstruction, repair, or rehabilitation is not normal O&M activities required for the existing environmental infrastructure features. Performance of normal O&M activities should not be considered for implementation under this authority. The letter from the sponsor should be part of the PCA package. If the original construction of the environmental infrastructure feature was performed under a Federal program that required OMRR&R, you should consult with your MSC and your HQ RIT for guidance before proceeding any further.

10. BETTERMENTS. – A betterment is a difference in quality of an element of the project to be designed/constructed, not a difference in kind. (Example: install larger size or higher grade pipe than needed to meet Federal standards) The term "betterment" does not include any design or construction for features not included in the definition of the project as defined in the agreement.

11. LIMITATIONS ON REIMBURSEMENTS BY THE GOVERNMENT.

A. Because the definition of total project costs expressly excludes any value of LER and relocations and permit costs in excess of 25 percent of total project costs, amounts to be reimbursed to the sponsor under these paragraphs will never include any value of LER and relocations or permit costs.

B. The amount of reimbursement provided pursuant to Article II.D. in any fiscal year is subject to the applicable limitations of Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103. The amount of reimbursement made under Article II.D. or VI.C.1. together with the credits or reimbursements proposed for all other applicable programs and projects cannot exceed the total limit indicated in each fiscal year. Each district should verify with your MSC and your HQ RIT to determine if you are impacted by this limitation.

12. ARTICLE II.E. - LIMITS ON FEDERAL PARTICIPATION.

A. CONGRESSIONAL ADD PARAGRAPH – Article II.E.1. - The dollar amount to be included in the first blank should the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement. The dollar amount to be included in the second blank should be that portion of available Section 595 Program funds for the applicable state that the district is projecting to be available for the project in this agreement, as of the effective date of the agreement. The

district, through the Project Coordination Team (Article V), shall work closely with each sponsor to plan execution of the project so that useful portions can be constructed as funds are made available. The sum of the amount of Federal funds made available for all the Section 595 agreements in the applicable state, including this one, plus the sum of Federal funds made available for overall management of the Section 595 Program allocated to the applicable state, cannot exceed the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement, nor can it exceed the current Section 595 Program Limit for the applicable state, unless Congress has authorized an increase in the limit in Act language.

B. SECTION 595 PROGRAM LIMITS – Article II.E.3. - The Government will not issue work allowances for projects undertaken in any state pursuant to the Section 595 Program beyond the amount authorized to be appropriated in Section 595 for that state, currently $55,000,000 for Idaho, $25,000,000 for Montana, $150,000,000 for rural Nevada, $25,000,000 for New Mexico, $50,000,000 for rural Utah, and $30,000,000 for Wyoming.

C. SUSPENSION OF GOVERNMENT PERFORMANCE – Article XIII.B. and Article XIII.C. - If the Government suspends its future performance responsibilities, including reimbursement, under the agreement pursuant to Article II.E.2. or Article XIV.C., the sponsor, at its sole discretion, may continue work on the project. However the sponsor should understand that if they continue to work on the project during the period of suspension of the Government's performance responsibilities, such work performed must comply with the conditions of Article II.C. of the agreement to be eligible for inclusion in total project costs and any reimbursement of the Federal share of such work once the Government has resumed its performance responsibilities. If the Section 102 Limit compels the Government to suspend reimbursement, but funds are otherwise available, the Government's performance of its other obligations will not be suspended.

13. COMPLETED PORTION OF THE PROJECT. – Because Section 595 authorizes the provision of design and construction assistance, the concept of functional portions of the project has been deleted. The district should use its best judgment to determine when construction of a portion of the project is complete so that the sponsor can commence its operation and maintenance responsibility.

14. ARTICLE II.L. - ADDITIONAL WORK. - The Government should not accept any requests for 1) acquisition of LER necessary for betterments, 2) performance of relocations necessary for betterments, or 3) obtaining permits necessary for the project.

15. ADDITIONAL ITEMS OF COOPERATION. - Include any additional paragraphs in the agreement necessary to reflect special requirements of non-Federal cooperation specified in the decision document upon which the agreement is based. Carefully review the items of non-Federal cooperation in the decision document to ensure that all items of cooperation are covered in the agreement. When including any additional items of cooperation in the agreement, name the responsible party then include the item of cooperation contained in the decision document. (Example: The Non-Federal Sponsor

shall ...) Including the additional items of non-Federal cooperation in the agreement is not considered a deviation from the model unless additional language is required elsewhere in the agreement to further address the added item of cooperation.

16. GUIDANCE ON APPRAISALS. - See Chapter 12 of ER 405-1-12 for guidance on applicable rules including use of Federal versus State rules in preparing an appraisal.

17. ARTICLE VI.A. – BREAKDOWN OF PROJECT COSTS.

A. The costs shown in Article VI.A.1. should be the current estimate of the costs at current price levels and inflated through the estimated mid-point of construction.

B. To determine the reimbursement of the Federal share due to the sponsor in accordance with II.D.: Step (1) determine the Government's share of total project costs; Step (2) subtract from the Government's share of total project costs the amount of total project costs to be incurred by the Government; the difference is the reimbursement of the Federal share due to the sponsor that should be shown in the sixth blank in Article VI.A.1.
Example:
total project costs = $2,000,000
total project costs to be incurred by the Government = $75,000
total project costs to be incurred by the sponsor = $1,925,000
Step 1 - ($2,000,000 x .75) = $1,500,000 - Government's share of total project costs
Step 2 - $1,500,000 – $75,000 = $1,425,000 – reimbursement due to sponsor

C. The blank in Article VI.A.2. should be filled in with the date (month, year) of the first quarterly report of costs to be provided to the sponsor.

18. ARTICLE VI.C. - FINAL ACCOUNTING.

A. When a final accounting cannot be conducted in a timely manner because of outstanding claims and appeals or eminent domain proceedings, an interim accounting should be conducted. The district should use its best judgment in determining whether to conduct an interim accounting or wait for final resolution of outstanding claims and appeals or eminent domain proceedings.

B. Nothing in the agreement, prevents any interim accountings from being conducted prior to the end of the period of design and construction.

19. TIMING OF FIRST REQUEST FOR SPONSOR'S FUNDS. – Insert the number of days (should be 60 or more). The last sentence of this paragraph states that the sponsor is required to provide the requested funds no later than 30 calendar days prior to the Government incurring any financial obligations for additional work. Therefore any number less than 60 will give the sponsor less than 30 days notice prior to when the funds must be provided to the Government.

20. LENGTH OF TIME TO PROVIDE ADDITIONAL FUNDS. – Insert the number of

days. The period of time should not exceed the time shown unless the District Engineer approves a longer period of time after determining that the longer period of time will not result in delays to the project (including contract modifications) or the Government using its funds to meet a shortfall in the sponsor's funds. The district must determine the need for additional funds from the sponsor far enough ahead of time to permit the sponsor full use of the specified period of time. Neither party's funds should be used to meet any shortfall in the other party's funds.

21. INSPECTION OF COMPLETED WORKS. – Due to the wide variety of potential projects to be undertaken in the future pursuant to this authority, the district may want to inspect some completed projects during the O&M phase. While this inspection is not mandatory, the decision to perform any inspection should be based on the specifics of the project. Reminder: Article VIII.B. is not an optional paragraph. It must be included in all agreements regardless of the level of inspections proposed to be performed.

22. ARTICLE IX – HOLD AND SAVE. - Include the optional language after the colon only if optional Article XIX - Obligations of Future Appropriations (see note 26) is included in the agreement and the sponsor requests this optional language be added to Article IX of the agreement. In addition, if this language is included, delete the "The". Reminder: The entire article is not optional as only the phrase shown in the brackets is optional.

23. ARTICLE XIV - HAZARDOUS SUBSTANCES. – In accordance with paragraph A. of this Article, the sponsor is to perform or ensure performance of investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on lands, easements, and rights-of-way necessary for the project. It is Army policy that the sponsor either perform these investigations in-house or contract for their performance with a third party. The Government should not perform these investigations on behalf of the sponsor. However, as stated in this article, the Government performs, or instructs the sponsor to perform investigations required on lands, easements, and rights-of-way that are subject to navigation servitude. For additional explanation, refer to ER 1165-2-132.

24. ARTICLE XV - NOTICES. – Insert the full address of the sponsor and Government - including titles or office title/symbol of individuals to receive the notices. Do not include the name of the individual to receive the notices as it may change throughout the life of the agreement.

25. ARTICLE XVIII – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES. – Article XVIII is optional and can be deleted if requested by the sponsor. If the article is deleted, renumber the remaining articles in the agreement and verify the references throughout the agreement to the remaining articles. In particular, if the article addressing Obligations of Future Appropriations is included in the agreement, and the sponsor requests the optional language in Article IX (see note 22) verify the reference contained in Article IX to the article addressing Obligations of Future Appropriations and correct, as necessary. Renumbering the remaining articles in the agreement and correction of all

references to the remaining articles are not considered a deviation from the model.

26. ARTICLE XIX – OBLIGATIONS OF FUTURE APPROPRIATIONS. - Include optional Article XIX in the agreement only if the sponsor requests this language and only after your District Counsel determines, in writing after review of information supporting the request from the sponsor, that the sponsor is a State agency or a political subdivision of the State that derives its funds for the project directly from appropriations and the sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in the first three blanks in Article XIX.A. should identify the body that makes the appropriations. (Example: Legislature of the State of Ohio or City Counsel of the City of Cleveland)

27. ARTICLE XIX.A. - ADDITIONAL RESTRICTION ON OBLIGATIONS OF FUTURE APPROPRIATIONS. - Include the optional language after the colon if requested by the sponsor. The information to be included in the blanks should provide more detailed information on the location of the obligation of future appropriations restriction. (Example: Section 7 of the City Charter of the City of Cleveland)

28. SPONSOR'S BUDGET CYCLE. - Choose Option (1) if the sponsor has a 1 year budget cycle or Option (2) if the sponsor has a 2 year budget cycle.

29. ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY. – Include optional Article XX only if the sponsor is a Native American Tribe. The information to be included in the first and third blanks should be the name of the instrument (resolution, ordinance, etc) where the sponsor has waived sovereign immunity. The information to be included in the fourth blank should be the title of the sponsor's representative (see note 6).

30. TITLE OF GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. If the signature authority is delegated to the district, the phrase "District Engineer" should be used in this location. If the signature authority is not delegated, the title shown should match the title of the Government representative shown in the first paragraph (see note 4).

31. CERTIFICATE OF AUTHORITY. - The person signing the Certificate of Authority cannot be the signatory to the agreement. The person signing the Certificate of Authority is certifying that the signatory to the agreement has the authority to obligate the sponsor. Do not forget to fill in the name in the first line prior to execution of the agreement.

32. PREPARING AGREEMENT FOR SIGNATURE.

A. When printing the agreement for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the agreement; 2) ensure that the appropriate information has been included in all blanks in the agreement and the Certificate of Authority; 3) ensure that titles of articles are not the last thing at the bottom of the page; and 4) ensure that there are no page breaks which allow half empty pages. Reminder: Do not remove any of the *italics* from the agreement.

B. If the signature authority has been delegated to the District Engineer: 1) the title of the Government representative in the first paragraph (see note 4) should be "U.S. Army Engineer, _____ District"; 2) the title of the Government representative in the last paragraph (see note 30) should be "District Engineer"; and 3) since this is a civilian document use the civilian version of the District Engineer's signature block.

C. If the signature authority is not delegated, the title in the first paragraph (see note 4) and last paragraph should match the title of the Government representative shown in the signature block.

D. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement, not the sponsor.

E. The Government should retain two fully executed copies of the agreement. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC and the appropriate HQ RIT) of the fully executed agreement should be provided to the MSC and to the appropriate HQ RIT within 14 days after execution of the agreement.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR
DESIGN AND CONSTRUCTION
ASSISTANCE
FOR THE
[FULL NAME OF PROJECT]

THIS AGREEMENT is entered into this _____ day of _____, ____, by and between the Department of the Army (hereinafter the "Government"), represented by the **[SEE NOTE - 4]** and **[FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 5]** (hereinafter the "Non-Federal Sponsor"), represented by **[SEE NOTE - 6]**.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

WHEREAS, Section 595 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

[SEE NOTE - 7]

OPTION 1

WHEREAS, Section 595 provides that $55,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Idaho pursuant to the Section 595 Program;

OPTION 2

WHEREAS, Section 595 provides that $25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Montana pursuant to the Section 595 Program;

OPTION 3

WHEREAS, Section 595 provides that $150,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Nevada pursuant to the Section 595 Program;

OPTION 4

WHEREAS, Section 595 provides that $25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in New Mexico pursuant to the Section 595 Program;

OPTION 5

WHEREAS, Section 595 provides that $50,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Utah pursuant to the Section 595 Program;

OPTION 6

WHEREAS, Section 595 provides that $30,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Wyoming pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, _____ District (hereinafter the "District Engineer") has determined that **[FULL NAME OF THE PROJECT]** in **[SPECIFIC LOCATION OF THE PROJECT, INCLUDING COUNTY & STATE]** (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

WHEREAS, Section 595 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* **[SEE NOTE – 8:** including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary**]**;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed $100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance

for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

[SEE NOTE - 9]

A. The term "*Project*" shall mean _____ in _____ as generally described in the **[FULL TITLE OF DECISION DOCUMENT]**, dated _____, ____ and approved by _____ on _____, ____.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: **[SEE NOTE - 8:** the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the

Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.E. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

[SEE NOTE - 10]

F. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

H. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term "*sufficient invoice*" shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

[SEE NOTE - 7]

OPTION 1

J. The term "*Section 595 Program Limit for Idaho*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Idaho pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $55,000,000.

OPTION 2

J. The term "*Section 595 Program Limit for Montana*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Montana pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $25,000,000.

OPTION 3

J. The term "*Section 595 Program Limit for rural Nevada*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Nevada pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $150,000,000.

OPTION 4

J. The term "*Section 595 Program Limit for New Mexico*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in New Mexico pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $25,000,000.

OPTION 5

J. The term "*Section 595 Program Limit for rural Utah*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Utah pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $50,000,000.

OPTION 6

J. The term "*Section 595 Program Limit for Wyoming*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Wyoming pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $30,000,000.

K. The term "*Section 102 Limit*" shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

[SEE NOTE - 8]

L. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article XI of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and

policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

C. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design and construction of the *Project*, subject to the conditions and limitations of this paragraph.

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

2. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total project costs*.

6. The Government shall not include in *total project costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

[SEE NOTE - 11]

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho.* **(2)** *Section 595 Program Limit for Montana.* **(3)** *Section 595 Program Limit for rural Nevada.* **(4)** *Section 595 Program Limit for New Mexico.* **(5)** *Section 595 Program Limit for rural Utah.* **(6)** *Section 595 Program Limit for Wyoming.***]**

[SEE NOTE - 12]

E. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, $_____ of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] of which $_____ is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the Government's future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph D. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] has reached the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho*, **(2)** *Section 595 Program Limit for Montana*, **(3)** *Section 595 Program Limit for rural Nevada*, **(4)** *Section 595 Program Limit for New Mexico*, **(5)** *Section 595 Program Limit for rural Utah*, **(6)** *Section 595 Program Limit for Wyoming*,] and the Government projects that the Federal funds the Government will make available to the *Project* within the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho* **(2)** *Section 595 Program Limit for Montana* **(3)** *Section 595 Program Limit for rural Nevada* **(4)** *Section 595 Program Limit for New Mexico* **(5)** *Section 595 Program Limit for rural Utah* **(6)** *Section 595 Program Limit for Wyoming*] will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the

Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho*, **(2)** *Section 595 Program Limit for Montana*, **(3)** *Section 595 Program Limit for rural Nevada*, **(4)** *Section 595 Program Limit for New Mexico*, **(5)** *Section 595 Program Limit for rural Utah*, **(6)** *Section 595 Program Limit for Wyoming*,] the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

[SEE NOTE - 13]

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

H. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of

such legal and institutional structures.

K. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

[SEE NOTE - 14]

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

[SEE NOTE - 8]

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

5. The Government shall not include in *total project costs* any costs for *pre-Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

[SEE NOTE - 15]

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be

necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits

pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. **[SEE NOTE - 16]** The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal

Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness,

allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is $10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of $10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** Nevada **(4)** New Mexico **(5)** Utah **(6)** Wyoming] would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of

the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction.* The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for

relocations and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

[SEE NOTE - 17]

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement **[SEE NOTE - 8:** , and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement].

1. As of the effective date of this Agreement, *total project costs* are projected to be $_____; the Government's share of *total project costs* is projected to be $_____; the Non-Federal Sponsor's share of *total project costs* is projected to be $_____; *total project costs* to be incurred by the Government are projected to be $_____; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be $_____; total reimbursements in accordance with paragraph B.2. of this Article are projected to be $_____; the value included

in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be $_____; **[SEE NOTE - 8:** the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be $_____;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be $_____; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be $_____; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be $_____. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By _____ and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; **[SEE NOTE - 8:** the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.D. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of

total project costs and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the "payment amount") if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho* **(2)** *Section 595 Program Limit for Montana* **(3)** *Section 595 Program Limit for rural Nevada* **(4)** *Section 595 Program Limit for New Mexico* **(5)** *Section 595 Program Limit for rural Utah* **(6)** *Section 595 Program Limit for Wyoming*] or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the "payment period"), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor's account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government's future performance or during suspension of only the Government's future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article XIII of this Agreement.

[SEE NOTE - 18]

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such

interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the [**SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho* **(2)** *Section 595 Program Limit for Montana* **(3)** *Section 595 Program Limit for rural Nevada* **(4)** *Section 595 Program Limit for New Mexico* **(5)** *Section 595 Program Limit for rural Utah* **(6)** *Section 595 Program Limit for Wyoming*] and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than **[SEE NOTE - 19]** calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable

to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within **[SEE NOTE – 20 - NOT TO EXCEED 30]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-

Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

[SEE NOTE - 21]

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

[SEE NOTE - 22: Subject to the provisions of Article XIX of this Agreement, the] The

Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and

regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

[SEE NOTE – 12]

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to

failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.E. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design and construction of the *Project*, at no cost to the Government.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

[SEE NOTE – 23]

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer

provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE NOTE - 24]

If to the Non-Federal Sponsor:

If to the Government:

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this

paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho. **(2)** Montana. **(3)** rural Nevada. **(4)** New Mexico. **(5)** rural Utah. **(6)** Wyoming.] None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

[SEE NOTE – 25]

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

[SEE NOTE – 26]

ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ **[SEE NOTE - 27:** , where creating such an obligation would be inconsistent with _____ of the _____ of _____].

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that **[SEE NOTE - 28 - CHOOSE: (1)** year, **(2)** biennium,] and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the

Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[SEE NOTE - 29]

ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY

By _____ dated _____, the Non-Federal Sponsor waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such _____ authorized **[SEE NOTE - 6]** _____ to include such waiver as part of this Agreement. Accordingly, the Non-Federal Sponsor hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; (2) recover damages for any breach of the terms and conditions of this Agreement; and (3) seek indemnification or contribution based on the Non-Federal Sponsor's obligations under Article IX of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the **[SEE NOTE - 30]**.

DEPARTMENT OF THE ARMY

BY: **[SIGNATURE]**
[TYPED NAME]
[TITLE IN FULL]

DATE: _____

(FULL NAME OF NON-FEDERAL SPONSOR)

BY: **(SIGNATURE)**
(TYPED NAME)
(TITLE IN FULL)

DATE: _____

[SEE NOTE - 31]

CERTIFICATE OF AUTHORITY

I, Jason Guinasso, do hereby certify that I am the principal legal officer of the **Incline Village General Improvement District**, that the **Incline Village General Improvement District** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **Incline Village General Improvement District** in connection with the **Effluent Export Line Pond Lining Project**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the **Incline Village General Improvement District** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ ___.

_____

Jason D. Guinasso. Esq.
District Designated Lawyer

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Kendra Wong, Chairwoman
IVGID Board of Trustees

DATE: _____

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Joseph J. Pomroy, P.E.
Director of Public Works

Charley Miller, P.E.
Engineering Manager

SUBJECT: Review, Discuss, and Authorize Chair and Legal Counsel to sign the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Export Phase II Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

STRATEGIC PLAN: Long Range Principle 5 – Assets and Infrastructure

DATE: February 15, 2019

I. RECOMMENDATION

That the Board of Trustees moves to authorize Chair and Legal Counsel to execute the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Export Phase II Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

II. DISTRICT STRATEGIC PLAN

Long Range Principle #5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.

- Complete condition analysis and project scoping for the Effluent Export Project – Phase II and continue to pursue project partnerships and federal funding to reduce District costs.

III. BACKGROUND

Incline Village General Improvement District (IVGID) currently owns, operates and maintains 21-mile pipeline that exports treated wastewater out of the Lake Tahoe Basin. The Effluent Export system also includes the un-lined pond and 500,000 gallon steel reservoir at the Water Resource Recovery Facility, the Spooner Effluent Pumping Stations and numerous valves, fittings and appurtenances located along the pipeline.

The Effluent Export Phase II Project will replace all of the remaining Segment 3 pipeline (17,300 linear feet) and portions or all of Segment 2 pipeline (13,700 linear feet) pending results of final condition assessment and design. Segment 3 experienced significant leaks in 2009 and 2014 of this bell and spigot pipe. Subsequent investigations confirmed progressive corrosion, which determined that wholesale replacement was required. Segment 2 is undergoing additional condition assessment efforts, as it was constructed of more robust welded steel and has not had a history of failures. This analysis is focused on identifying segments with extended life remaining and segments that need to be addressed in near term. Final design will dictate whether Segment 2 work will be of limited scope or complete replacement. The full scope of work and predesign cost estimates are included as attachments to this memo.

The District now has the opportunity to submit this project to the United States Army Corps of Engineers (USACE) for a Design and Construction Assistance Agreement under Section 595 of the Water Resources Development Act 1999 and its amendments.

The District has had a long positive working relationship with the USACE in funding and constructing infrastructure and environmental improvement projects since 2002. The District has received $15.5 million dollars through the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016) Section 595 Program for the Effluent Export Project. The WIIN Act was formerly called the Water Resources Development Act. The District has also received $6 million from the Lake Tahoe Restoration Act Section 108 Program for funding Environmental Restoration Projects that was matched with $2 million of State of Nevada Funding for Mill, Incline and Third Creeks Restoration Projects.

The District and the District's Legislative Advocate, worked with the Nevada Delegation and other western states on raising the authorization of the Section 595 Program of the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016). Nevada will be collaborating on Rural Section 595 with five other states, New Mexico, Montana, Wyoming, Idaho and Utah, who already have projects which qualify under Section 595. The new Section 595 Program increased the authorization limit by $100 million over the previous limit to allow new annual appropriations through the Federal Budget process.

New language was inserted into Section 595 that clarifies that funding caps do not apply to individual States and that unspent monies can be re-allocated to priority projects in any state. This was an extremely important piece of language to have added because the US Army Corps was not open to discussing a new Project Partnership Agreement because they had interpreted that Nevada had spent their allocation of funds under Section 595.

In 2017, Staff and Marcus Faust worked with the US Army Corps staff in Sacramento and US Army Corps staff in Washington on bulletins describing this new language change. This provided the opportunity for the District to pursue a new Project Partnership Agreement with the USACE.

V. FINANCIAL IMPACT AND BUDGET

The Effluent Export Line – Phase II Project is included in the District's Capital Improvement Budget. The current scope of work identifies the most current cost project budget for the Effluent Project Phase II Improvements. The Design and Construction Assistance Agreement provides up to 75% reimbursement of qualifying expenses as specified in the agreement. At this time it is unknown the level of reimbursement that the USACE would be able to provide.

VI. ALTERNATIVES

None proposed.

VII. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
ENGINEERING DIVISION TECHNICAL MEMORANDUM

TO: LAURA WHITNEY/USACE SACRAMENTO DISTRICT

FROM: JOSEPH J. POMROY, P.E./IVGID

SUBJECT: IVGID EFFLUENT EXPORT PIPELINE PROJECT PHASE II SCOPE OF WORK

DATE: FEBRUARY 15, 2019

BACKGROUND

The Incline Village General Improvement District (IVGID) first partnered with the US Army Corps of Engineers (USACE) in April 2003 under the Section 595 Program of the Water Resources Development Act, now WIINS, Water Infrastructure Improvements for the Nation, to tackle this extraordinary project to rehabilitate a 21-mile pipeline that exports treated wastewater out of the Lake Tahoe Basin. IVGID is a small public utility that provides water and wastewater service for a year round population of about 10,000 residents in the communities of Incline Village and Crystal Bay on the north shore of Lake Tahoe. In 1970, this 21 mile pipeline was installed as part of the regional effort to protect Lake Tahoe's water quality by requiring all wastewater effluent to be exported out of the basin.

The original pipe, now almost 50 years old, is reaching the end of its useful life and ongoing corrosion has caused failure at multiple locations. Early phases of this project investigated the whole pipeline and prioritized the replacement schedule to maintain this critical infrastructure. Within the Tahoe Basin this pipe was divided into three segments. Segment 1 is the low pressure supply pipe to the pump station near Sand Harbor. Segment 2 is the welded steel high pressure discharge pipe exiting the pump station. Segment 3 is the remaining low pressure jointed steel transmission pipeline within the Tahoe Basin running south to Spooner Summit.

Phase 1 work completed has replaced all four miles of Segment 1 pipe within NDOT right-of-way as well as well as two miles of Segment 3 pipeline that crosses through State Park lands at Spooner Lake. Another critical component of these projects was the elimination of two small wastewater treatment plants located at Sand Harbor and Memorial Point State Parks which are located next to Lake Tahoe. The wastewater is now pumped directly to IVGID for treatment at the regional plant. IVGID's original Spooner Pumping station was also completely renovated with improved emergency pumping capacity.

Overall, IVGID has been diligently pursuing the replacement of the effluent export pipeline since 2003 in the Lake Tahoe Basin. Total capital expenditures to date have been $22.8 million over the last 16 years to replace the aging effluent export system. IVGID has received $15.4 million in funding from the WRDA Section 595 program through a Project Cooperation Agreement with the United State Army Corps of Engineers.

The District has now placed in its new 10 year capital improvement plan an additional $23 million in expenditures to replace the remaining six miles of effluent pipeline in the Lake Tahoe Basin. The capital plan has been approved by the IVGID Board of Trustees. The IVGID Board of Trustees has also already approved four consecutive years of 10% sewer rate increases (2011, 2012, 2013 and 2014), a 45% total increase to sewer rates, to accumulate the funds for this critical infrastructure replacement. The District is now collecting from our rate payers an additional $2 million per year to fund this project.

EFFLUENT STORAGE IMPROVEMENTS PROJECT

Effluent Export Pipeline Phase II Replacement – 2019-2023

The project represents an onerous and unusual infrastructure requirement for a small utility district. This challenge is also unique to the Lake Tahoe basin in that the pipeline replacement helps assure the protection of a national environmental resource. In 2011, IVGID began engineering design for the complete replacement of the remaining six miles of Phase II export pipeline within the Lake Tahoe basin. Preliminary cost estimates are at $23 million (in 2021 Dollars) for the work in this narrow mountainous highway corridor. The predesign cost estimate is provided as an attachment.

Phase II will replace all of the remaining Segment 3 pipeline (17,300 linear feet) and portions or all of Segment 2 pipeline (13,700 linear feet) pending results of final condition assessment and design. Segment 3 experienced significant leaks in 2009 and 2014 and subsequent investigations confirmed progressive corrosion of this bell and spigot pipe with wholesale replacement required. Segment 2 is undergoing additional condition assessment efforts as it was constructed of more robust welded steel and has not had a history of failures. Final design will dictate whether Segment 2 work will be of limited scope or complete replacement.

Phase II work will be completed over multiple years in a manner similar to Phase I of the Effluent Export Pipeline Project. Like Phase 1, pipe in State Route 28 be replaced using open-cut construction moving the pipeline to the center of the Southbound travel lane. However alternatives now include co-locating with the planned Stateline-to-Stateline bikeway slated to parallel State Route 28 and potentially avoid the complications of working in the State Highway.

IVGID is a partner with the Tahoe Transportation District (TTD) in the Lake Tahoe SR 28 Corridor Management Plan that will construct portions of the Stateline-to-Stateline bikeway on the Nevada side of Lake Tahoe near the existing pipeline. TTD and IVGID completed a preliminary engineering investigation that determined it feasible to co-locate the effluent pipeline with the Bike Path in a new alignment adjacent to the SR 28 corridor from near Sand Harbor to Spooner Junction. IVGID joined the TTD in a cost sharing agreement to complete the Environment Assessment of both alignment alternatives of the pipeline replacement. Should the Bike Path project proceed, there exists a unique partnership to deliver an outstanding recreational opportunity along with replacing the pipeline in a cost effective and expeditious manner. There are numerous advantages for operating and maintaining the pipeline under a bike path as opposed to under the busy SR-28 corridor.

Project conditions dictate that IVGID's pipeline work be completed as a multi-year project. Similarly the proposed bikeway nearby will be phased over multiple seasons and may be subject to additional unique constraints.

CONCEPTUAL PROJECT MILESTONES

- **2019 Evaluation:** Engineering review of 2018 Condition assessment data and near term design of repairs, if needed.
- **2019-20 Repairs:** Construct any repairs identified from 2018 Condition assessment evaluation.
- **2019-20 Phase II Final Design:** Design for the remaining thin-wall Segment 3 pipeline replacement – 13,700 lf and identified Segment 2 pipeline - up to 17,300 lf
- **2020-2026 Tahoe Basin Pipeline Replacement:** The replacement in phases of up to 31,000 feet of pipeline in highway. Short construction windows require 4 to 6 years to complete.

PREDESIGN COST ESTIMATE

See attachment.

CONCEPTUAL PROJECT BUDGET

Attached is the HDR May 30, 2012 - Estimate of Probably Construction Cost for the 16 inch Effluent Pipeline. This estimate assumes a 2021 construction start date with 4% escalation.

ESTIMATED FISCAL YEAR (FY) BUDGET

FY 2020	Estimated Cost
IVGID Administrative Costs	$256,100
Design	$1,280,800
Subtotal	**$1,536,900**
FY 2021	
IVGID Administrative Costs	$256,100
Construction Administration & Management	$320,000
Construction	$4,803,000
Subtotal	**$5,379,100**
FY 2022	
IVGID Administrative Costs	$256,100
Construction Administration & Management	$320,000
Construction	$4,803,000
Subtotal	**$5,379,100**
FY 2023	
IVGID Administrative Costs	$256,100
Construction Administration & Management	$320,000
Construction	$4,803,000
Subtotal	**$5,379,100**
FY 2023	
IVGID Administrative Costs	$256,100
Construction Administration & Management	$320,000
Construction	$4,803,000
Subtotal	**$5,379,100**
Total	**$23,053,300**

***numbers are rounded**

PROJECT LOCAL SHARE

IVGID presently has sufficient funds in Utility Fund Reserves to provide the necessary project local share.

Job No. 00115-15E96J

Computation

Project	IVGID Export Pipeline Project, Phase II	*Computed*	HDR
Subject	Estimate of Probable Construction Cost - 16 inch Effluent Pipeline	*Date*	5/30/2012
Task	PreDesign Cost Estimate - Singe Bid	*Reviewed*	IVGID
Start	2021 construction start with assumed 4% escalation	*Date*	6/4/2012

	QUANTITY	UNITS	UNIT PRICE	TOTAL COST
DIVISION 1 - GENERAL REQUIREMENTS				
Mobilization and Demobilization (10%)	1	LS	$1,311,829	$1,311,829
Insurance and Bonds (3%)	1	LS	$393,549	$393,549
SUBTOTAL				**$1,705,377**
DIVISION 2 - SITE WORK				
Mitigation and Environmental Controls	1	LS	$250,000	$250,000
Asphalt Cutting	59,400	LF	$3.95	$234,499
Repaving - Trench Section	178,200	SF	$5.26	$937,996
Asphalt Overlay (1 inch open-graded) and Rotomill	356,400	SF	$1.32	$468,998
Asphalt Stripping	59,400	LF	$0.99	$58,625
Excavation (Soil)	21,945	CY	$32.90	$721,953
Excavation (Rocks)	1,155	CY	$789.56	$911,941
Hauling and Disposal (Soil and Rocks)	14,135	CY	$23.69	$334,813
Shoring	29,700	LF	$10.53	$312,665
Backfill and Compaction (Intermediate)	8,965	CY	$59.22	$530,880
Backfill and Compaction (Initial Backfill)	4,619	CY	$59.22	$273,498
Bedding Material	1,100	CY	$59.22	$65,139
Aggregate Base	3,300	CY	$59.22	$195,416
Grout Existing Effluent Pipeline	1,816	CY	$296.08	$537,817
Traffic Control	1	LS	$200,000.00	$200,000
Blow off Valves (Installation and Miscell.)	5	EACH	$986.95	$4,935
AVRV manholes	11	EACH	$3,947.80	$43,426
SUBTOTAL				**$6,082,599**
DIVISION 3 - CONCRETE				
Concrete Pipe Cover	1,650	CY	$263.19	$434,257
SUBTOTAL				**$434,257**
DIVISION 15 - MECHANICAL				
PIPES				
8 inch DI (Blowoff)	75	LF	$105.27	$7,896
2 inch HDPE pipe	176	LF	$6.58	$1,158
16-inch DIP Pipe	29,700	LF	$210.55	$6,253,308
FITTINGS				
DIP Fittings (Assume 3% of Pipe Cost)	1	LS	$188,000	$188,000
VALVES				
2 inch AVRV	11	EACH	$2,631.86	$28,950
2 inch Gate Valve	11	EACH	$197.39	$2,171
8 inch Gate Valve (Blowoff)	5	EACH	$1,315.93	$6,580
16 inch Butterfly Valves	2	EACH	$5,263.73	$10,527
Valve Boxes (Blowoff)	10	EACH	$657.97	$6,580
Valve Extension Rod and Casing (Blowoff)	5	EACH	$986.95	$4,935
Tie-in	2	EACH	$6,579.66	$13,159
Pipeline Pressure Testing	29,700	LF	$2.63	$78,166
SUBTOTAL				**$6,601,430**
Subtotal 1 (Division Total)				**$14,823,664**
Contractor Overhead and Profit (8% of Subtotal 1)				$1,185,893
Subtotal 2				**$16,009,557**
Construction Contingencies (20% of Subtotal 2)				$3,201,911
Design (8% of Subtotal 2)				$1,280,765
Administrative Costs (8% of Subtotal 2)				$1,280,765
Construction Management (8% of Subtotal 2)				$1,280,765
Subtotal 3				**$23,053,763**
TOTAL ESTIMATED PROJECT COST				**$23,053,763**

SECTION 595 – WRDA 1999, AS AMENDED

ENVIRONMENTAL INFRASTRUCTURE

IDAHO, MONTANA, RURAL NEVADA, NEW MEXICO, RURAL UTAH, AND WYOMING

MODEL AGREEMENT FOR DESIGN AND CONSTRUCTION ASSISTANCE

(WORK PERFORMED BY NON-FEDERAL SPONSOR)

OCTOBER 25, 2005
REVISED - NOVEMBER 19, 2005
REVISED - JULY 15, 2009

APPLICABILITY. – The attached model agreement is one of six models for the provision of environmental assistance to non-Federal interests in Idaho, Montana, rual Nevada, New Mexico, rural Utah, and Wyoming pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (Section 595) projects. The following descriptions of the six models are provided to assist in determining the correct model to be used for your project. None of the models discussed below should be used for the provision of environmental infrastructure assistance pursuant to any other authority. Models for the provision of environmental infrastructure assistance pursuant to other authorities can be found in the approved model section of the PCA Web page. If there is no approved model posted in the approved model section of the PCA Web page that is applicable to your particular environmental infrastructure authorization, the District Project Delivery Team should consult with the appropriate HQ RIT for guidance on drafting the appropriate agreement.

***Section 595 Non-Federal Design and Construction* – The attached model should be used for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.**

***Section 595 Non-Federal Design* – Use only for Section 595 projects when the**

sponsor requests design for the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

Section 595 Non-Federal Construction – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

Section 595 Federal Design – Use only for Section 595 projects when the sponsor requests design for the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

Section 595 Federal Construction – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the construction. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

Section 595 Federal Design and Construction – Use only for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design or construction. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.

NOTES. – The following pages (iv – xi) contain numbered notes to assist in drafting an agreement for your project using this model. Throughout the model agreement, there are references to the numbered notes (example: [SEE NOTE – 7]) to direct you to the appropriate note that provides explanation and guidance on use of optional language or

information required to fill in the blanks. Several of the notes are general in nature and should be reviewed and discussed with the sponsor during preparation of the draft agreement for your project.

OPTIONAL LANGUAGE. – The use of optional language allows the model to be applicable to a larger universe of projects. Many of the numbered notes (example: [SEE NOTE – 8]) require you to choose between multiple versions of language or to choose whether or not to include a paragraph, sentence, or phrase depending on the specifics of your project. In many cases optional language to address a concept, such as the sponsor performing non-Federal design and construction work, is required in numerous locations throughout the agreement. Each of these locations has been identified with numbered notes; however, it is important to ensure that, if the optional language addressing a certain concept is included in one location, it is also included in all other appropriate locations. Correct use of the optional language is not considered a deviation from the model.

BLANKS. – There are numerous locations where information specific to your project is required to fill in a blank. All of the blanks must be filled in, except the date in the first paragraph, prior to forwarding the agreement for review. Including the information required to fill in a blank is not considered a deviation from the model.

DEFINED TERMS SHOWN IN ITALICS. – Throughout the agreement the terms defined in Article I are shown in italics. Do not remove any of the *italics* from the agreement.

NOTES:

1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the agreement prior to forwarding for review. Reminder: Do not remove any of the *italics* from the agreement.

2. SECTION 595 TERMINOLOGY. - The Section 595 program envisions a wide array of different types of projects, some of which do not fit the typical definition of construction. As a result, the terms "construction" and "construct" used throughout the agreement, may not be appropriate for all types of projects. Therefore, substitution throughout the agreement as appropriate, of "implementation" and "implement" for projects consisting of non-structural type activities or "construction and implementation" and "construct and implement" for projects that are a combination of typical construction and non-structural type activities is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

3. MULTIPLE SPONSORS. - In the event there are two or more entities serving as the sponsors for the project, and there is no division of responsibilities between or among them, the agreement can be modified to identify all the entities collectively as the "Non-Federal Sponsors". However, it should be explained to all entities that the term "Non-Federal Sponsors" is construed to hold multiple sponsors jointly and severally responsible for compliance with all agreement obligations. The changes outlined below are required to identify all entities collectively as "Non-Federal Sponsors" and are not considered a deviation from the model.

A. Modify title to include name of each entity serving as a sponsor.

B. Modify first paragraph to include name of each entity serving as a sponsor. (Example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the "Non-Federal Sponsors"))

C. Change "Non-Federal Sponsor" to "Non-Federal Sponsors" throughout the agreement. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase "Non-Federal Sponsors" to reflect multiple sponsors (i.e. "its" to "their" or "assumes" to "assume", etc.).

D. On the signature page, a separate signature block will be required for each entity serving as a sponsor.

E. A separate Certificate of Authority will be required for each entity serving as a sponsor.

F. A Certification Regarding Lobbying must be signed by each signatory to the agreement.

4. GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. (Example: U.S. Army Engineer, Mobile District)

5. REFERENCE TO NON-FEDERAL SPONSOR. - Use "Non-Federal Sponsor", "Local Sponsor", "State", "County", "Commonwealth", "Territory" or other identifier as preferred by the sponsor in the parenthetical phrase and consistently throughout the agreement. This change is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

6. NON-FEDERAL SPONSOR REPRESENTATIVE. – Insert the title of the sponsor's representative signing the agreement. Do not include the name, only the title. The title shown for the sponsor's representative should match the title shown on the signature page and should be preceded by "the" or "its", as appropriate, to match the title of the sponsor's representative. (Example: the Mayor)

7. LOCATION OF PROJECT. – Choose, Option (1) if the project in the agreement is located in Idaho; Option (2) if the project in the agreement is located in Montana; Option (3) if the project in the agreement is located in rural Nevada; Option (4) if the project in the agreement is located in New Mexico; Option (5) if the project in the agreement is located in rural Utah; or Option (6) if the project in the agreement is located in Wyoming. Delete, in their entirety, the options not used.

8. PRE-AGREEMENT DESIGN WORK. – Only design performed by the sponsor prior to the effective date of the agreement should be considered as pre-Agreement design work. The reasonable costs of pre-Agreement design work shall be included in total project costs which have not been included in any other agreement for the project. If the sponsor wants to include costs for pre-Agreement design work, then all language on pre-Agreement design work should be included in the agreement. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the sponsor is requesting costs for pre-Agreement design work be included in total project costs.

9. DESCRIPTION OF THE PROJECT. – The input required for the description of the project is described below.

A. Describe the project features to be undertaken pursuant to this agreement in detail sufficient to avoid any confusion over what is or is not included. If the project features to be undertaken pursuant to this agreement are an element of a countywide or statewide environmental infrastructure system, only the features to be undertaken in this agreement should be included in the description of the project. Reminder: Do not include any lands, easements, rights-of-way, (LER) or relocations requirements of the project in this description.

B. The title and date of the decision document that describes the project should be included (such as Scope of Work, Feasibility Report with Engineering Appendix, General

Reevaluation Report, etc.). Also include the title of the approving official (such as Assistant Secretary of the Army (Civil Works); Chief of Engineers; Commander, _____ Division; or Commander, _____ District) and the date of approval. The civilian format for any dates included in the agreement should be used. (Example: January 22, 2004)

C. For any projects where the proposed work is reconstruction, repair, or rehabilitation of existing environmental infrastructure features, the sponsor must verify in writing if it was constructed through any other Federal program and whether OMRR&R was required and that the proposed reconstruction, repair, or rehabilitation is not normal O&M activities required for the existing environmental infrastructure features. Performance of normal O&M activities should not be considered for implementation under this authority. The letter from the sponsor should be part of the PCA package. If the original construction of the environmental infrastructure feature was performed under a Federal program that required OMRR&R, you should consult with your MSC and your HQ RIT for guidance before proceeding any further.

10. BETTERMENTS. – A betterment is a difference in quality of an element of the project to be designed/constructed, not a difference in kind. (Example: install larger size or higher grade pipe than needed to meet Federal standards) The term "betterment" does not include any design or construction for features not included in the definition of the project as defined in the agreement.

11. LIMITATIONS ON REIMBURSEMENTS BY THE GOVERNMENT.

A. Because the definition of total project costs expressly excludes any value of LER and relocations and permit costs in excess of 25 percent of total project costs, amounts to be reimbursed to the sponsor under these paragraphs will never include any value of LER and relocations or permit costs.

B. The amount of reimbursement provided pursuant to Article II.D. in any fiscal year is subject to the applicable limitations of Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103. The amount of reimbursement made under Article II.D. or VI.C.1. together with the credits or reimbursements proposed for all other applicable programs and projects cannot exceed the total limit indicated in each fiscal year. Each district should verify with your MSC and your HQ RIT to determine if you are impacted by this limitation.

12. ARTICLE II.E. - LIMITS ON FEDERAL PARTICIPATION.

A. CONGRESSIONAL ADD PARAGRAPH – Article II.E.1. - The dollar amount to be included in the first blank should the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement. The dollar amount to be included in the second blank should be that portion of available Section 595 Program funds for the applicable state that the district is projecting to be available for the project in this agreement, as of the effective date of the agreement. The

district, through the Project Coordination Team (Article V), shall work closely with each sponsor to plan execution of the project so that useful portions can be constructed as funds are made available. The sum of the amount of Federal funds made available for all the Section 595 agreements in the applicable state, including this one, plus the sum of Federal funds made available for overall management of the Section 595 Program allocated to the applicable state, cannot exceed the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement, nor can it exceed the current Section 595 Program Limit for the applicable state, unless Congress has authorized an increase in the limit in Act language.

B. SECTION 595 PROGRAM LIMITS – Article II.E.3. - The Government will not issue work allowances for projects undertaken in any state pursuant to the Section 595 Program beyond the amount authorized to be appropriated in Section 595 for that state, currently $55,000,000 for Idaho, $25,000,000 for Montana, $150,000,000 for rural Nevada, $25,000,000 for New Mexico, $50,000,000 for rural Utah, and $30,000,000 for Wyoming.

C. SUSPENSION OF GOVERNMENT PERFORMANCE – Article XIII.B. and Article XIII.C. - If the Government suspends its future performance responsibilities, including reimbursement, under the agreement pursuant to Article II.E.2. or Article XIV.C., the sponsor, at its sole discretion, may continue work on the project. However the sponsor should understand that if they continue to work on the project during the period of suspension of the Government's performance responsibilities, such work performed must comply with the conditions of Article II.C. of the agreement to be eligible for inclusion in total project costs and any reimbursement of the Federal share of such work once the Government has resumed its performance responsibilities. If the Section 102 Limit compels the Government to suspend reimbursement, but funds are otherwise available, the Government's performance of its other obligations will not be suspended.

13. COMPLETED PORTION OF THE PROJECT. – Because Section 595 authorizes the provision of design and construction assistance, the concept of functional portions of the project has been deleted. The district should use its best judgment to determine when construction of a portion of the project is complete so that the sponsor can commence its operation and maintenance responsibility.

14. ARTICLE II.L. - ADDITIONAL WORK. - The Government should not accept any requests for 1) acquisition of LER necessary for betterments, 2) performance of relocations necessary for betterments, or 3) obtaining permits necessary for the project.

15. ADDITIONAL ITEMS OF COOPERATION. - Include any additional paragraphs in the agreement necessary to reflect special requirements of non-Federal cooperation specified in the decision document upon which the agreement is based. Carefully review the items of non-Federal cooperation in the decision document to ensure that all items of cooperation are covered in the agreement. When including any additional items of cooperation in the agreement, name the responsible party then include the item of cooperation contained in the decision document. (Example: The Non-Federal Sponsor

shall ...) Including the additional items of non-Federal cooperation in the agreement is not considered a deviation from the model unless additional language is required elsewhere in the agreement to further address the added item of cooperation.

16. GUIDANCE ON APPRAISALS. - See Chapter 12 of ER 405-1-12 for guidance on applicable rules including use of Federal versus State rules in preparing an appraisal.

17. ARTICLE VI.A. – BREAKDOWN OF PROJECT COSTS.

A. The costs shown in Article VI.A.1. should be the current estimate of the costs at current price levels and inflated through the estimated mid-point of construction.

B. To determine the reimbursement of the Federal share due to the sponsor in accordance with II.D.: Step (1) determine the Government's share of total project costs; Step (2) subtract from the Government's share of total project costs the amount of total project costs to be incurred by the Government; the difference is the reimbursement of the Federal share due to the sponsor that should be shown in the sixth blank in Article VI.A.1.
Example:
total project costs = $2,000,000
total project costs to be incurred by the Government = $75,000
total project costs to be incurred by the sponsor = $1,925,000
Step 1 - ($2,000,000 x .75) = $1,500,000 - Government's share of total project costs
Step 2 - $1,500,000 – $75,000 = $1,425,000 – reimbursement due to sponsor

C. The blank in Article VI.A.2. should be filled in with the date (month, year) of the first quarterly report of costs to be provided to the sponsor.

18. ARTICLE VI.C. - FINAL ACCOUNTING.

A. When a final accounting cannot be conducted in a timely manner because of outstanding claims and appeals or eminent domain proceedings, an interim accounting should be conducted. The district should use its best judgment in determining whether to conduct an interim accounting or wait for final resolution of outstanding claims and appeals or eminent domain proceedings.

B. Nothing in the agreement, prevents any interim accountings from being conducted prior to the end of the period of design and construction.

19. TIMING OF FIRST REQUEST FOR SPONSOR'S FUNDS. – Insert the number of days (should be 60 or more). The last sentence of this paragraph states that the sponsor is required to provide the requested funds no later than 30 calendar days prior to the Government incurring any financial obligations for additional work. Therefore any number less than 60 will give the sponsor less than 30 days notice prior to when the funds must be provided to the Government.

20. LENGTH OF TIME TO PROVIDE ADDITIONAL FUNDS. – Insert the number of

days. The period of time should not exceed the time shown unless the District Engineer approves a longer period of time after determining that the longer period of time will not result in delays to the project (including contract modifications) or the Government using its funds to meet a shortfall in the sponsor's funds. The district must determine the need for additional funds from the sponsor far enough ahead of time to permit the sponsor full use of the specified period of time. Neither party's funds should be used to meet any shortfall in the other party's funds.

21. INSPECTION OF COMPLETED WORKS. – Due to the wide variety of potential projects to be undertaken in the future pursuant to this authority, the district may want to inspect some completed projects during the O&M phase. While this inspection is not mandatory, the decision to perform any inspection should be based on the specifics of the project. Reminder: Article VIII.B. is not an optional paragraph. It must be included in all agreements regardless of the level of inspections proposed to be performed.

22. ARTICLE IX – HOLD AND SAVE. - Include the optional language after the colon only if optional Article XIX - Obligations of Future Appropriations (see note 26) is included in the agreement and the sponsor requests this optional language be added to Article IX of the agreement. In addition, if this language is included, delete the "The". Reminder: The entire article is not optional as only the phrase shown in the brackets is optional.

23. ARTICLE XIV - HAZARDOUS SUBSTANCES. – In accordance with paragraph A. of this Article, the sponsor is to perform or ensure performance of investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on lands, easements, and rights-of-way necessary for the project. It is Army policy that the sponsor either perform these investigations in-house or contract for their performance with a third party. The Government should not perform these investigations on behalf of the sponsor. However, as stated in this article, the Government performs, or instructs the sponsor to perform investigations required on lands, easements, and rights-of-way that are subject to navigation servitude. For additional explanation, refer to ER 1165-2-132.

24. ARTICLE XV - NOTICES. – Insert the full address of the sponsor and Government - including titles or office title/symbol of individuals to receive the notices. Do not include the name of the individual to receive the notices as it may change throughout the life of the agreement.

25. ARTICLE XVIII – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES. – Article XVIII is optional and can be deleted if requested by the sponsor. If the article is deleted, renumber the remaining articles in the agreement and verify the references throughout the agreement to the remaining articles. In particular, if the article addressing Obligations of Future Appropriations is included in the agreement, and the sponsor requests the optional language in Article IX (see note 22) verify the reference contained in Article IX to the article addressing Obligations of Future Appropriations and correct, as necessary. Renumbering the remaining articles in the agreement and correction of all

references to the remaining articles are not considered a deviation from the model.

26. ARTICLE XIX – OBLIGATIONS OF FUTURE APPROPRIATIONS. - Include optional Article XIX in the agreement only if the sponsor requests this language and only after your District Counsel determines, in writing after review of information supporting the request from the sponsor, that the sponsor is a State agency or a political subdivision of the State that derives its funds for the project directly from appropriations and the sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in the first three blanks in Article XIX.A. should identify the body that makes the appropriations. (Example: Legislature of the State of Ohio or City Counsel of the City of Cleveland)

27. ARTICLE XIX.A. - ADDITIONAL RESTRICTION ON OBLIGATIONS OF FUTURE APPROPRIATIONS. - Include the optional language after the colon if requested by the sponsor. The information to be included in the blanks should provide more detailed information on the location of the obligation of future appropriations restriction. (Example: Section 7 of the City Charter of the City of Cleveland)

28. SPONSOR'S BUDGET CYCLE. - Choose Option (1) if the sponsor has a 1 year budget cycle or Option (2) if the sponsor has a 2 year budget cycle.

29. ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY. – Include optional Article XX only if the sponsor is a Native American Tribe. The information to be included in the first and third blanks should be the name of the instrument (resolution, ordinance, etc) where the sponsor has waived sovereign immunity. The information to be included in the fourth blank should be the title of the sponsor's representative (see note 6).

30. TITLE OF GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. If the signature authority is delegated to the district, the phrase "District Engineer" should be used in this location. If the signature authority is not delegated, the title shown should match the title of the Government representative shown in the first paragraph (see note 4).

31. CERTIFICATE OF AUTHORITY. - The person signing the Certificate of Authority cannot be the signatory to the agreement. The person signing the Certificate of Authority is certifying that the signatory to the agreement has the authority to obligate the sponsor. Do not forget to fill in the name in the first line prior to execution of the agreement.

32. PREPARING AGREEMENT FOR SIGNATURE.

A. When printing the agreement for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the agreement; 2) ensure that the appropriate information has been included in all blanks in the agreement and the Certificate of Authority; 3) ensure that titles of articles are not the last thing at the bottom of the page; and 4) ensure that there are no page breaks which allow half empty pages. Reminder: Do not remove any of the *italics* from the agreement.

B. If the signature authority has been delegated to the District Engineer: 1) the title of the Government representative in the first paragraph (see note 4) should be "U.S. Army Engineer, _____ District"; 2) the title of the Government representative in the last paragraph (see note 30) should be "District Engineer"; and 3) since this is a civilian document use the civilian version of the District Engineer's signature block.

C. If the signature authority is not delegated, the title in the first paragraph (see note 4) and last paragraph should match the title of the Government representative shown in the signature block.

D. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement, not the sponsor.

E. The Government should retain two fully executed copies of the agreement. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC and the appropriate HQ RIT) of the fully executed agreement should be provided to the MSC and to the appropriate HQ RIT within 14 days after execution of the agreement.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR
DESIGN AND CONSTRUCTION
ASSISTANCE
FOR THE
[FULL NAME OF PROJECT]

THIS AGREEMENT is entered into this _____ day of _____, ____, by and between the Department of the Army (hereinafter the "Government"), represented by the **[SEE NOTE - 4]** and **[FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 5]** (hereinafter the "Non-Federal Sponsor"), represented by **[SEE NOTE - 6]**.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

WHEREAS, Section 595 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

[SEE NOTE - 7]

OPTION 1

WHEREAS, Section 595 provides that $55,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Idaho pursuant to the Section 595 Program;

OPTION 2

WHEREAS, Section 595 provides that $25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Montana pursuant to the Section 595 Program;

OPTION 3

WHEREAS, Section 595 provides that $150,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Nevada pursuant to the Section 595 Program;

OPTION 4

WHEREAS, Section 595 provides that $25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in New Mexico pursuant to the Section 595 Program;

OPTION 5

WHEREAS, Section 595 provides that $50,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Utah pursuant to the Section 595 Program;

OPTION 6

WHEREAS, Section 595 provides that $30,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Wyoming pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, _____ District (hereinafter the "District Engineer") has determined that **[FULL NAME OF THE PROJECT]** in **[SPECIFIC LOCATION OF THE PROJECT, INCLUDING COUNTY & STATE]** (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

WHEREAS, Section 595 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* **[SEE NOTE – 8:** including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary];

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed $100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance

for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

[SEE NOTE - 9]

A. The term "*Project*" shall mean _____ in _____ as generally described in the **[FULL TITLE OF DECISION DOCUMENT]**, dated _____, ____ and approved by _____ on _____, ____.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: **[SEE NOTE - 8:** the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the

Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.E. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

[SEE NOTE - 10]

F. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

H. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term "*sufficient invoice*" shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

[SEE NOTE - 7]

OPTION 1

J. The term "*Section 595 Program Limit for Idaho*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Idaho pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $55,000,000.

OPTION 2

J. The term "*Section 595 Program Limit for Montana*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Montana pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $25,000,000.

OPTION 3

J. The term "*Section 595 Program Limit for rural Nevada*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Nevada pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $150,000,000.

OPTION 4

J. The term "*Section 595 Program Limit for New Mexico*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in New Mexico pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $25,000,000.

OPTION 5

J. The term "*Section 595 Program Limit for rural Utah*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Utah pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $50,000,000.

OPTION 6

J. The term "*Section 595 Program Limit for Wyoming*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Wyoming pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $30,000,000.

K. The term "*Section 102 Limit*" shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

[SEE NOTE - 8]

L. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article XI of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and

policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

C. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design and construction of the *Project*, subject to the conditions and limitations of this paragraph.

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

2. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total project costs*.

6. The Government shall not include in *total project costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

[SEE NOTE - 11]

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho.* **(2)** *Section 595 Program Limit for Montana.* **(3)** *Section 595 Program Limit for rural Nevada.* **(4)** *Section 595 Program Limit for New Mexico.* **(5)** *Section 595 Program Limit for rural Utah.* **(6)** *Section 595 Program Limit for Wyoming.*]

[SEE NOTE - 12]

E. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, $_____ of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] of which $_____ is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the Government's future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph D. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] has reached the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho*, **(2)** *Section 595 Program Limit for Montana*, **(3)** *Section 595 Program Limit for rural Nevada*, **(4)** *Section 595 Program Limit for New Mexico*, **(5)** *Section 595 Program Limit for rural Utah*, **(6)** *Section 595 Program Limit for Wyoming*,] and the Government projects that the Federal funds the Government will make available to the *Project* within the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho* **(2)** *Section 595 Program Limit for Montana* **(3)** *Section 595 Program Limit for rural Nevada* **(4)** *Section 595 Program Limit for New Mexico* **(5)** *Section 595 Program Limit for rural Utah* **(6)** *Section 595 Program Limit for Wyoming*] will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the

Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho*, **(2)** *Section 595 Program Limit for Montana*, **(3)** *Section 595 Program Limit for rural Nevada*, **(4)** *Section 595 Program Limit for New Mexico*, **(5)** *Section 595 Program Limit for rural Utah*, **(6)** *Section 595 Program Limit for Wyoming*,] the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

[SEE NOTE - 13]

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

H. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of

such legal and institutional structures.

K. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

[SEE NOTE - 14]

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

[SEE NOTE - 8]

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

5. The Government shall not include in *total project costs* any costs for *pre-Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

[SEE NOTE - 15]

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be

necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits

pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. **[SEE NOTE - 16]** The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal

Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness,

allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is $10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of $10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** Nevada **(4)** New Mexico **(5)** Utah **(6)** Wyoming] would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of

the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction.* The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for

relocations and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

[SEE NOTE - 17]

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement **[SEE NOTE - 8:** , and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement].

1. As of the effective date of this Agreement, *total project costs* are projected to be $_____; the Government's share of *total project costs* is projected to be $_____; the Non-Federal Sponsor's share of *total project costs* is projected to be $_____; *total project costs* to be incurred by the Government are projected to be $_____; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be $_____; total reimbursements in accordance with paragraph B.2. of this Article are projected to be $_____; the value included

in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be $_____; **[SEE NOTE - 8:** the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be $_____;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be $_____; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be $_____; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be $_____. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By _____ and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; **[SEE NOTE - 8:** the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.D. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of

total project costs and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the "payment amount") if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the **[SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho* **(2)** *Section 595 Program Limit for Montana* **(3)** *Section 595 Program Limit for rural Nevada* **(4)** *Section 595 Program Limit for New Mexico* **(5)** *Section 595 Program Limit for rural Utah* **(6)** *Section 595 Program Limit for Wyoming*] or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the "payment period"), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor's account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government's future performance or during suspension of only the Government's future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article XIII of this Agreement.

[SEE NOTE - 18]

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such

interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the [**SEE NOTE - 7 - CHOOSE: (1)** *Section 595 Program Limit for Idaho* **(2)** *Section 595 Program Limit for Montana* **(3)** *Section 595 Program Limit for rural Nevada* **(4)** *Section 595 Program Limit for New Mexico* **(5)** *Section 595 Program Limit for rural Utah* **(6)** *Section 595 Program Limit for Wyoming*] and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than **[SEE NOTE - 19]** calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable

to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within **[SEE NOTE – 20 - NOT TO EXCEED 30]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-

Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

[SEE NOTE - 21]

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

[SEE NOTE - 22: Subject to the provisions of Article XIX of this Agreement, the] The

Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and

regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

[SEE NOTE – 12]

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to

failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.E. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design and construction of the *Project*, at no cost to the Government.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

[SEE NOTE – 23]

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer

provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE NOTE - 24]

If to the Non-Federal Sponsor:

If to the Government:

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this

paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho **(2)** Montana **(3)** rural Nevada **(4)** New Mexico **(5)** rural Utah **(6)** Wyoming] implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in **[SEE NOTE - 7 - CHOOSE: (1)** Idaho. **(2)** Montana. **(3)** rural Nevada. **(4)** New Mexico. **(5)** rural Utah. **(6)** Wyoming.] None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

[SEE NOTE – 25]

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

[SEE NOTE – 26]

ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ **[SEE NOTE - 27:** , where creating such an obligation would be inconsistent with _____ of the _____ of _____].

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that **[SEE NOTE - 28 - CHOOSE: (1)** year, **(2)** biennium,] and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the

Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[SEE NOTE - 29]

ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY

By _____ dated _____, the Non-Federal Sponsor waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such _____ authorized **[SEE NOTE - 6]** _____ to include such waiver as part of this Agreement. Accordingly, the Non-Federal Sponsor hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; (2) recover damages for any breach of the terms and conditions of this Agreement; and (3) seek indemnification or contribution based on the Non-Federal Sponsor's obligations under Article IX of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the **[SEE NOTE - 30]**.

DEPARTMENT OF THE ARMY

BY: **[SIGNATURE]**
[TYPED NAME]
[TITLE IN FULL]

DATE: _____

(FULL NAME OF NON-FEDERAL SPONSOR)

BY: **(SIGNATURE)**
(TYPED NAME)
(TITLE IN FULL)

DATE: _____

[SEE NOTE - 31]

CERTIFICATE OF AUTHORITY

I, Jason Guinasso, do hereby certify that I am the principal legal officer of the **Incline Village General Improvement District**, that the **Incline Village General Improvement District** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **Incline Village General Improvement District** in connection with the **Effluent Export Line Project, Phase II**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the **Incline Village General Improvement District** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ ___.

_____

Jason D. Guinasso. Esq.
District Designated Lawyer

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Kendra Wong, Chairwoman
IVGID Board of Trustees

DATE: _____

MEMORANDUM

TO:	Board of Trustees
FROM:	Steven J. Pinkerton General Manager
SUBJECT:	Review, discuss, and possibly provide direction regarding the offer from Washoe County School District to purchase the old elementary school property (771 Southwood Boulevard) for $2,000,000.
STRATEGIC PLAN REFERENCE(S):	Long Range Principal #4 – Service Long Range Principal #5 – Assets and Infrastructure
DATE:	February 19, 2019

I. RECOMMENDATION

That the Board of Trustees decline the offer from Washoe County School District to purchase the old elementary school site (771 Southwood Boulevard) but request that IVGID participate in the planning and development process if another public entity purchases the property.

II. DISTRICT STRATEGIC PLAN

Long Range Principal #4 - Service
- The District will provide superior quality service and value to its customers considering responsible use of District resources and assets.

Long Range Principal #5 – Assets and Infrastructure
- Conduct planning and design, in advance of undertaking projects or procurement, to ensure new District assets meet operational requirements and enhance the customer experience.

III. BACKGROUND

On January 11, 2019, the Washoe County School District (WCSD) sent a letter to IVGID (attached) regarding the disposition of the old elementary school property at 771 Southwood Boulevard.

WCSD has determined that the property will no longer be needed for school facilities. Based on this determination, WCSD participated in the planning process for IVGID's draft Community Services Master Plan (Plan).

The property was identified as an "Opportunity Site" in the Plan. Possible uses included soccer fields, flex lawn, a dedicated dog park, bocce courts, picnic pavilions and a playground. Detailed site plans with three alternative scenarios are included on pages 88-89 of the draft Plan.

All of these potential uses are also being considered at other opportunity sites as well. Prioritization of uses, sites and possible funding have not yet been incorporated into the Plan. It is anticipated that the Board of Trustees will begin reviewing the final Draft Plan this spring, with final adoption later this year.

Currently, there are no identified funding sources for any aspects of the Plan. All current District capital assets are dedicated towards maintenance and replacement of current District facilities.

WCSD has an "as-is" appraisal of the property which places the value at $3,000,000. NRS 277 allows WCSD to directly dispose of property directly to another political subdivision if used for a public purpose. WCSD staff has indicated that they would recommend to the WCSD Board a purchase price of $2,000,000 for a public purpose purchase.

IV. CURRENT SITUATION

As noted in the letter, WCSD *"would like to inquire if IVGID desires to continue to go forward with this property transaction? We would really appreciate if you would please let us know of IVGID's desire on this matter by April 30th so that we can continue to move forward in the process."*

In discussions with WCSD staff, they are hoping that IVGID could indicate their interest in the property as soon as possible. There are other potential public agencies also interested in the property and they'd like to keep the sale process moving expeditiously.

At this time, Staff would recommend that IVGID decline the opportunity to purchase the site and request that the District participate in the planning and development process if another public entity purchases the property.

Once the Community Services Master Plan is adopted by the Board, there will be a better idea of the implementation priorities for the Plan, potential funding sources

identified and possible timing of specific projects. Any public entity purchasing the site will have to go through a lengthy process to entitle the property thus giving IVGID the opportunity to coordinate with the lead Agency.

V. FINANCIAL IMPACT AND BUDGET

None expected at this time. If the District chooses to purchase the property, there is potential funding available in the Community Service Fund. However, there would need to be a discussion in conjunction with the review of the Capital Improvement Plan budget to determine what other projects would need to be delayed or cancelled in order to facilitate the purchase.

In addition, as noted in the draft Community Services Master Plan, estimated construction costs for improving the site with recreational facilities is in excess of $7 million.

VI. ALTERNATIVES

Initiate negotiations with WCSD to purchase the site, defer a decision until the April Board of Trustees meeting or request that WCSD to refrain from offering the site to other agencies until the Community Services Master Plan is completed.

Washoe County School District
425 East Ninth Street * P.O. Box 30425 * Reno, NV 89520-3425
Phone (775) 348-0200 * (775) 348-0304 * www.washoeschools.net

January 11, 2019

Mr. Steven Pinkerton
General Manager, Incline Village General Improvement District (IVGID)
893 Southwood Blvd.
Incline Village, NV 89451

RE: Old Incline Elementary School Property

Dear Steve,

The Washoe County School District (WCSD) is currently in the process of disposing of excess property that is owned by the District. Several parcels have been identified that WCSD will not be utilizing for future school facilities. As you are aware, WCSD has been working with your staff in regards to potential public and private uses for the old Incline Elementary School property located at 771 Southwood Blvd. In this regard, WCSD participated in the IVGID Community Services Master Plan.

Based on a property appraisal from Johnson, Perkins, & Griffin dated September 21, 2017, the property was valued at $3,000,000 in an "as-is" condition that includes the existing elementary school structure. Nevada Revised Statutes (NRS 277) allows WCSD to directly dispose of property to another political subdivision if used for a public purpose without going through the typical property disposal process. During our discussions with IVGID staff, WCSD staff agreed to make a recommendation to the WCSD Board of Trustees to provide the property to IVGID in exchange for $2,000,000. We would like to inquire if IVGID desires to continue to go forward with this property transaction? We would really appreciate if you would please let us know of IVGID's desire on this matter by April 30th so that we can continue to move forward in the process.

Thank you for your time and assistance on this matter and your continued partnership with WCSD.

Sincerely,

Pete Etchart, Chief Operating Officer
Washoe County School District

Traci Davis, Superintendent
Washoe County School District

Introduction to the District's 2019/2020 Budgets

All materials will be presented at the meeting of February 27, 2019

Quick Reference

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REAL PROPERTY DISPOSAL RULES

1. INTRODUCTION

Land and Property dealings by the Incline Village General Improvement District (herein referenced as "IVGID" or "the District") attract wide public interest. Suspicions are easily aroused and are fostered when procedures used are not clearly defined or transactions are not supported by documented evidence. IVGID, therefore, is enacting this policy in accordance with NRS 318.160 so that the District order to have a clear code of practice underpinned by procedural guidelines which are adhered to by both Board Members and Staff when dealing with such matters.

2. SCOPE

2.1. These Procedural Rules apply to the disposal, by way of sale or lease, of interests in land and property including fixtures and fittings etc., incidental thereto. The power for the IVGID Board to sell and the conditions which attach to the sale may be governed by the legislation under which the land or property was acquired. These Procedure Rules relate to land or property which IVGID is in a position to sell or lease under NRS 318.160. Specifically, NRS 318.160 gives the IVGID authority to acquire, dispose of and encumber property. In this regard, the statute provides:

> "The board shall have the power to acquire, dispose of and encumber real and personal property, and any interest therein, including leases, easements, and revenues derived from the operation thereof. The constitutional and inherent powers of the legislature are hereby delegated to the board for the acquisition, disposal and encumbrance of property; but the board shall in no case receive title to property already devoted to public purpose or use, except with the consent of the owners of such property, and except upon approval of a majority of the board."

2.2. All dealings with land and property will be conducted in accordance with the procedural guidelines entitled, "Dealing with the Disposal of Land and Property – Guidelines," which comprise the detailed procedures to be followed in every case by IVGID staff.

2.3. Disposals of items of furniture, goods, vehicles, plant and equipment which are not incidental to any interest in land or property and are deemed surplus to the requirements of the Board of Trustees, are exempt from this procedure, as these transactions are covered by NRS Chapter 354.

3. THE BOARD OF TRUSTEES POLICY/OBJECTIVES

3.1. The District will properly manage the risk and responsibilities in its portfolios of Non-Operational Land Holdings to achieve investment and service objectives. The future planned use of the parcels of land under the District's ownership is an important strategy for availability of service as a government. That includes the consideration of making designated properties available for use for recreation opportunities for generations to come. The District will:

3.1.1. Carefully and clearly define what the objectives are for acquisition, holding (for recreation purposes) or reselling (for returning properties to the tax or facility fee roll) of non-operational land parcels. Non-operating parcels are generally not incorporated into an IVGID venue or its structures or improvements.
3.1.2. Maintain a projection for costs to carry ownership into the future.
3.1.3. Considering the political climate and stakeholders' view toward accumulation of parcels for any stated purpose.
3.1.4. Consider the opportunity costs to not acting upon land acquisition or by claiming tax delinquent parcels when the possibility exists.
3.1.5. Consider limits on the amount invested, or the quantity of properties acquired for resale, or for the return to the tax or facility fee rolls based on marketability and best use of public funds.
3.1.6. Consider the legal compliance aspects of acquiring tax forfeit properties and the possibility of honoring a redemption period before the District can act.
3.1.7. Establish that parcels acquired for recreation purposes, as defined by their deed, will not be considered available for resale except to another governmental agency.
3.1.8. Establish that resale of parcels will not be offered in a manner that conflicts with free market listings of similarly situated properties by way of price or terms.
3.1.9. Include an analysis of the inventory and class of coverage, as defined by the Tahoe Regional Planning Agency, held by the District and whether it should be placed with the State of Nevada for sale.
3.1.10. Every three years a report on the Non-Operational Land Holdings and coverage inventory to maintain an awareness of the extent and purpose of these District assets.

4. METHODS OF DISPOSAL

4.1. Unless otherwise agreed to by the Board of Trustees, disposal shall be by one of the three principal methods of selling or leasing land and property, which are:

4.1.1. Public Auction;
4.1.2. Formal Tender;
4.1.3. Invitation of (sealed) offers; or

4.1.4. A negotiated agreement approved by the Board of Trustees and supported by a finding that the negotiated real property disposal is in the best interest of the District.

4.2. Depending on the circumstances of a particular disposal, any one of the above may be suitable. It is, however, expected that (4.1.2) and (4.1.3) will be preferred for disposals.

4.3. The method used in each case should, however, be the most appropriate in the circumstances and the reasons for using it will be demonstrated and justified in a report to be approved under the Board of Trustees's prior to the commencement of any disposal.

4.4. A brief description of each disposal method is given below:

4.4.1. Public Auction

4.4.1.1. An auction may bring about a quick conclusion to a sale where there is likely to be keen interest from a wide market of cash buyers or where the property is unusual but is likely to have a ready market. It is also a method to be considered where it is in the Board of Trustees's interests to conclude an early sale, for example where a building may deteriorate if left vacant for the longer period it often takes to conclude a sale by another method. The successful bidder signs a binding contract to acquire the property at the sale with an agreed completion date and pays a deposit.

4.4.1.2. As auctions are conducted in public they may overcome potential suspicions or accusations of unfair practice. A reputable Auctioneer should be appointed with a reserve price confirmed in writing to the Auctioneer.

4.4.1.3. Public Auction is unlikely to be appropriate for the sale of development land or property as it does not readily allow the flexibility to accept offers on a conditional basis subject to clarification of issues such as ground conditions, contamination and planning consent. Particular difficulties also exist in relation to the sale of land held on charitable trust.

4.4.2. Formal Tender

4.4.2.1. Under a formal tender, conditions of sale and legal documentation are prepared in advance and sealed offers are sought on the basis that acceptance by the Board of Trustees will form a binding contract. In order to limit the conditionality of bids and aid comparison, a comprehensive package of information is forwarded to each bidder which may include an outline planning consent, a ground condition report, a site investigation report etc. The assembly of such information is time-consuming and costly and this can lead to abortive costs if little or no interest arises. It does, however, minimize the risk of, or accusations of, impropriety.

4.4.2.2. It is a method appropriate for disposals in the open market, or when using pre-determined shortlists of potential tenderers, particularly for development land and property with restricted use, for example where sites have been cleared and planning consent for a particular use is available.

4.4.3. Invitations to Submit Sealed Offers

4.4.3.1. This method is similar to formal tender in that sealed offers are invited, however the acceptance of an offer does not form a binding contract. It is relatively simple as less detailed information is required at the outset and therefore consumes less officer time and monetary outlay than formal tendering. It also allows some flexibility through post-offer negotiations, but these need to be kept under control by the imposition of time limits.

4.4.3.2. It is appropriate for disposals in the open market, or when inviting offers from a pre-determined shortlist of potential bidders, particularly for development land and property where several uses might be possible and negotiation would be required to achieve the best scheme from the Board of Trustees's perspective.

4.4.4. A negotiated agreement approved by the Board of Trustees and supported by a finding that the negotiated real property disposal is in the best interest of the District

4.4.4.1. Negotiated sale between parties when specific parcels or forms of consideration are in the best interest of the District. For example intergovernmental swap of parcels.

5. ADVERTISING

5.1. All disposals will be advertised.

5.2. Advertising will be of sufficient intensity and direction to effectively canvass potential buyers. An outline of advertising proposals and a cost ceiling should be established on a scale in keeping with the estimated value of the land or property for disposal.

CHAPTER 5.01 DISTRICT FUNDS

5.01.010 Budget Process and Procedure

1. The District will provide high quality services that are readily accessible to its parcel owners.

2. The District will implement clear financial objectives, careful control of operations, and management of monetary and physical assets and its workforce.

3. The District shall develop a Strategic Planning Process to provide a context for policy, as well as direction for the budget process.

4. The Board of Trustees will maintain a set of Long Range Principles under the Strategic Planning Process. These Principles will include, at a minimum, an element for each of the following areas:

    a. Resources and Environment. Promote and enhance the resources and environment of the Lake Tahoe Basin.
    b. Finance. Continue to ensure the fiscal responsibility and sustainability of the District by maintaining sound effective policies for operation budgets, revenue and expenditures, fund balances, capital improvements, investments and risk management.

        i. IVGID's process for establishing the financial goals for each of its departments will address both financial measures for operating and net income (loss) and cash flow.
        ii. As a part of the operating budget process, IVGID will review each major venue's cash flow needs for the upcoming fiscal year. On the basis of those reviews IVGID shall establish an allocation of the Recreation and/or Beach Facility Fee, considering established amounts of working capital and the predicted timing of revenues and expenditures for that fiscal year.
        iii. IVGID will review the consequences to each department's net income (loss) and cash flow based upon its expected Capital Improvement Projects and Debt Service obligations. The effects of these items will be incorporated into the applicable allocation of the Recreation and/or Beach Facility Fee.
        iv. REPORTING ON THE RECREATION AND BEACH FACILITY FEE - The annual Recreation and Beach Facility Fee Allocation, based on the next fiscal

year's Operating and Capital Improvement Project budgets and scheduled Debt Service, will be made available to each parcel owner, in accordance with NRS, prior to and subsequent to adoption of the fiscal year budget by the Board of Trustees. This summary will delineate the amount of Recreation and Beach Facility Fee allocated to each sub-fund. The summary will also indicate when amounts have been designated for reserve purposes.

v. REPORTING THE DISTRICT'S OVERALL FINANCIAL RESULTS – The District will make its overall financial results available for public inspection by issuing a Comprehensive Annual Financial Report (CAFR). The CAFR results from the audit process for each fiscal year and is approved by the Board of Trustees typically in November.

vi. Other forms of information can be suggested by the Board of Trustees and then developed in cooperation with the General Manager.

c. Workforce. Maintain our highly qualified workforce and status as a premier employer in the Lake Tahoe Basin.

d. Services. Deliver high quality services balanced with maintaining financial performance.

i. SERVICES - IVGID will offer services contingent upon the need for them in the community and in compliance with NRS Chapter 318.

ii. OPERATIONS - IVGID will review operating methods, on an annual basis, and make decisions based on an objective analysis of the service, quality and cost versus value to the users.

iii. UTILIZATION – IVGID will consider the constituency it serves and how those services can be best delivered for the District as a whole. The District provides services first and foremost to the District's parcel owners, who are also the primary connection to the community's businesses, civic and charitable organizations.

e. Facilities. Maintain and enhance the District's infrastructure to support service delivery.

f. Communications. Considering the best use of public funds, educate and engage the parcel owners and residents of the Crystal Bay and Incline Village community. The District will consider a variety of methods for communication to accommodate the spectrum of needs and formats.

5. IVGID's program and service performance measures will be developed and used as an important component of budgeting, financial planning and decision making. These measures will be linked to the District's budgeting. Performance measures should:

a. be based on Long Range Principles that tie to a statement of program mission or purpose;

b. measure program outcomes;
c. tie to services provided;
d. measure efficiency and effectiveness for continuous improvement;
e. be verifiable, understandable, and timely;
f. be consistent throughout the budget, accounting and reporting systems and to the extent practical, be consistent over time;
g. be reported internally and externally;
h. be monitored and used in managerial decision-making processes;
i. be limited to a number and degree of complexity that can provide an efficient and meaningful way to assess the effectiveness and efficiency of key programs; and
j. be designed in such a way to motivate staff at all levels to contribute toward organizational improvement.

6. The District will use performance measures as an integral part of the budget process. Performance measures should be used to report on the outputs and outcomes of each program and should be related to the mission, Long Range Principles and objectives of each department.

7. In the final analysis, the District recognizes that the value of any performance measurement program is derived through positive behavioral change. Stakeholders at all levels must embrace the concept of continuous improvement and be willing to be measured against objective expectations.

8. To achieve the objective of integrating Strategic Planning and performance into the budgetary process, the District will:

   a. Conduct analysis to determine what strategies, objectives and actions will best achieve the desired results.
   b. Prioritize the results or outcomes as services and activities that matter most to the parcel owners as a whole.
   c. Allocate resources among high priority results. The allocations should be made in a fair and objective manner. Then budget resources to the most significant services and activities to maximize the benefit of the available resources as the best use of public funds.
   d. Set measures of annual progress, monitor, and provide feedback. These measures should spell out the expected results and outcomes and how they will be measured.
   e. Monitor Outcomes for what actually happened. This involves using performance measures to compare actual versus budgeted results.
   f. Communicate performance results. Internal and external stakeholders should be informed of the results in an understandable format.
   g. The District Finance and Accounting Department responsibilities are:

i. Facilitating government-wide results and analytical support.
ii. Providing credible budget allocations and expected revenues in the light of current environmental factors.
iii. Advising on allocations for administrative support functions, which provide necessary organizational infrastructure for achieving community goals, but do not typically emerge as high priorities on their own.
iv. Design a work product to facilitate the process of budgeting for results and outcomes and in a reportable form.
v. Serving as an advocate for outcomes and the process in general rather than for any particular department.

9. The District will maintain the following processes: (a) Financial Planning; (b) Revenue; and (c) Expenditure. The District's adopted financial policies should be used to frame major practice initiatives and be summarized in the budget document. These processes, along with any others that may be adopted, will be reviewed during the development of the operating budget. The Finance and Accounting staff should review the processes to ensure continued relevance and to identify any gaps that should be addressed with new processes. The results of the review should be shared with the Board of Trustees during the review of the proposed budget. Process categories that should be considered for development, adoption and regular review are as follows:

a. Financial Planning. Financial planning addresses the need for a long-term view and the fundamental principle of a balanced budget. At a minimum, the District processes support:

i. Balanced Budget. The District shall adopt a process that defines a balanced operating budget, encourages commitment to a balanced budget under normal circumstances, and provides for disclosure when a deviation from a balanced operating budget is planned or when it occurs.
ii. Long-Range Planning. The District shall adopt a process(s) that supports the long-term financial implications of current and proposed operating and capital budgets, budget policies, cash management and investment policies, programs and assumptions.
iii. Asset Inventory. The District shall adopt a process to inventory and assess the condition of all major capital assets. This information should be used to plan for the ongoing financial commitments required to make the best use of public funds.

b. Revenue. Understanding the revenue stream is essential to prudent planning. The purpose of this Code Section is to seek stability to avoid potential service disruptions caused by revenue shortfalls.

i. Revenue Diversification. The District shall adopt a process that encourages a diversity of revenue sources in order to improve the ability to handle fluctuations in individual sources.

ii. Fees and Charges for Services. The District shall adopt process that identifies the manner in which fees and charges for services are set and the extent to which they cover the cost of the service provided.
iii. Use of One-time Revenues. The District discourages the use of one-time revenues for ongoing expenditures.
iv. Use of Unpredictable Revenues. The District, as a matter of process, requires budget documents to identify the nature of collection and use of major revenue sources it considers unpredictable.

c. Expenditures. The District's expenditures define the ongoing public service commitment. Prudent expenditure planning and accountability will ensure fiscal stability. The District shall maintain processes to address:

i. Debt Capacity, Issuance, and Management. The District, through the Board of Trustees, shall adopt a process that specifies appropriate uses for debt and identifies the maximum amount of debt and debt service that should be outstanding at any time.
ii. Reserve or Stabilization Accounts. The District shall adopt a process to maintain a prudent level of financial resources to protect against the need to reduce service levels, raise taxes, modify charges for services or reallocate facility fees due to temporary revenue shortfalls or unpredicted one-time expenditures.
iii. Operating/Capital Expenditure Accountability. The District shall adopt a process to compare actual expenditures to budget periodically and indicate actions to bring the budget into balance or other actions, if necessary. Comparisons may be of a financial nature or relative to measures of performance and results.

10. The District will maintain a formal practice on the level of Fund Balance that should be maintained in the General and Special Revenue Funds.

a. The adequacy of Unassigned Fund Balance in the General Fund should be assessed based upon the District's own specific circumstances. (Nevertheless, the Government Finance Officers Association (GFOA) recommends, at a minimum, that general-purpose governments, regardless of size, maintain Unassigned Fund Balance in their General Fund of no less than five to fifteen percent of regular General Fund operating revenues.) The Nevada Administrative Code (NAC) 354.650 requires a budgeted fund balance of 4%, based on the actual expenditures of the General Fund's previous fiscal year.
b. Building "stabilization arrangements" in the General Fund is an acknowledged purpose in response to revenue shortfalls and unanticipated expenditures.
c. The District employs the term "fund balance" to describe the net position of governmental funds calculated in accordance with Generally Accepted Accounting Principles (GAAP) at the individual fund level. Budget professionals

commonly use this same term to describe the net position of governmental funds calculated on a government's budgetary basis. In both cases, fund balance is intended to serve as a measure of the financial resources available for use in a governmental fund type.

d. Financial reporting distinguishes restricted fund balance from unassigned and unrestricted fund balance. Typically, only the latter is available for spending. A "stabilization arrangement" indicates a designated portion of unassigned or unrestricted fund balance is subject to an action by the governing body concerning the use of that amount.

11. The District will prepare and adopt a formal capital budget as part of their annual budget process.

    a. The capital budget will be directly linked to, and flow from, the Multi-Year Capital Improvement Plan.
    b. It may be necessary to modify projects approved in the capital plan before adopting them in a capital budget.

        i. Modifications may be necessary based on changes in project scope, funding requirements, or other issues.
        ii. If these modifications are material, the District will consider the impacts these may have on its multi-year capital and financial plans.

    c. The capital budget should be adopted by formal action of the Board of Trustees, either as a component of the operating budget or as a separate capital budget. It must comply with all state and local legal requirements.
    d. Preparing and Adopting the Capital Budget. The capital budget will include the following information:

        i. A definition of capital expenditure for the District.
        ii. Summary information of capital projects by fund, function, venue/service or activity.
        iii. A schedule for completion of the project, including specific phases of a project, estimated funding requirements for the upcoming year(s), and planned timing for acquisition, pre- design, design, and construction or acquisition activities and transition to complete operation.
        iv. Descriptions of the general scope of the project, including expected service and financial benefits to the District.
        v. A description of any impact the project will have on the current or future operating budget.
        vi. Estimated costs of the project, based on recent and accurate sources of information.
        vii. Identified funding sources for all aspects of the project, specifically referencing any financing requirements for the upcoming fiscal year.

viii. Funding authority based either on total estimated project cost, or estimated project costs for the upcoming fiscal year. Consideration should be given to carry-forward funding for projects previously authorized.

ix. Any analytical information deemed helpful for setting capital priorities.

e. The District needs a greater level of detail and information for non-routine capital projects than for routine projects. For non-routine projects, the capital budget should thoroughly describe the impact on the operating budget, number of additional positions required, tax or fee implications, and other financial or service impacts.

f. Reporting on the Capital Budget. The District recognizes the importance of timely and accurate reporting on projects adopted in the capital budget. Management, Trustees, and citizens should all have the ability to review the status and expected completion of approved capital projects. Periodic reports will be issued routinely on all ongoing capital projects. The reports will compare actual expenditures to the original budget, identify level of completion of the project, and enumerate any changes in the scope of the project, and alert management to any concerns with completion of the project on time or on schedule.

12. The District will maintain practices in conformity with the NRS 354.107 (Regulations) and 354.613(c) (Enterprise Funds Cost Allocation), including:

a. Central Service Cost Allocation Plan for accumulating, allocating and developing billing rates on allowable costs of services provided by the District's General Fund to departments, divisions and Enterprise Funds.
b. This Code Section and related practices can only be modified by a non-consent calendar agenda item during a regular meeting of the Board of Trustees.
c. This Code Section is specific to the equitable distribution of general, overhead, administrative and similar costs incurred by the District's General Fund in the process of supporting the operation of the District's Enterprise Funds.
d. The underlying practice, along with any others that may be adopted for other financial purposes, will be reviewed during the budget process. The Finance and Accounting staff should review the practices to ensure continued relevance and to identify any gaps that should be addressed with new practices. The results of the review should be shared with the Board of Trustees during the review of the proposed budget. Each budget year, the current Central Service Cost Allocation Plan will be filed with the Nevada Department of Taxation as required.
e. Practice categories that should be considered for development, adoption and regular review are as follows:

i. Costs Allowed

ii. Allocation Method
iii. Billing rates for services provided

13. The District will maintain a formal practice on the level of working capital that should be maintained in the Enterprise (Utility) Fund.

    a. Enterprise Funds distinguish between current and non-current assets and liabilities. It is possible to take advantage of this distinction to calculate Working Capital (i.e., current assets less current liabilities). The measure of working capital indicates the relatively liquid portion of total Enterprise Fund capital, which constitutes a margin or buffer for meeting obligations. It is essential that the District maintain adequate levels of working capital in its Enterprise Funds to mitigate current and future risks (e.g., revenue shortfalls and unanticipated expenses) and to ensure stable services and fees. Working Capital is a crucial consideration, too, in long-term financial planning. Credit rating agencies consider the availability of working capital in their evaluations of continued creditworthiness. Likewise, laws and regulations may speak to appropriate levels of working capital for some Enterprise Funds.
    b. The Government Finance Officers Association (GFOA) recommends that local governments adopt a target amount of working capital to maintain in each of their Enterprise Funds. The District's targets will be formally described in the Practice as adopted and amended as needed.
    c. Working capital is defined as current assets minus current liabilities; the District will consider certain characteristics of working capital that affect its use as a measure. Specifically, the "current assets" portion of working capital includes assets or resources that are reasonably expected to be realized in cash (e.g., accounts receivable) or consumed (e.g., inventories and prepaid expenses) within a year.
    d. Stability of revenues and expenses are also considerations for an accurate calculation of working capital. The District will consider the adequacy of Working Capital in its Enterprise Funds during each annual budget process. The majority of such consideration will be established by the predictability of the revenues to be received from users. Building Working Capital in the Enterprise Funds is an acknowledged purpose in response to revenue shortfalls and unanticipated expenditures, debt service requirements and planning for capital expenditures.
    e. The District employs the term "Net Position" for Enterprise Funds, calculated in accordance with GAAP. Financial reporting distinguishes Restricted from Unrestricted Net Position. Typically, only the latter is available for spending. Working Capital for operating needs should be sourced from Unrestricted Net Position. The District has debt service and capital expenditure needs that extend beyond one year. Therefore, amounts outside of the calculation of Working Capital may develop for those purposes. As such these may also be considered elements of both Restricted and Unrestricted Net Position.

14. The District shall maintain Fund Balance in the General Fund and each governmental or proprietary fund type in a manner which provides for contractual, bond and customer service obligations, while meeting its routine and non-routine cash flow requirements and complying with all federal, state and local statutes and regulations.

    a. SCOPE - The District shall apply accounting principles as forth in Governmental Accounting Standards Board (GASB) Statement 54 considering the unique characteristics of the District. To that end the following measurements will apply to each fund or type:

        i. General Fund. The General Fund must meet the minimum balance requirements under Nevada Administrative Code Section 354.650.
        ii. Special Revenue Funds. Community Services; 25% of a fiscal years' operating expenditures (based on the current adopted budget) other than capital expenditure and debt service.
        iii. Beach Enterprise; 25% of a fiscal year's operating expenditures (based on the current adopted budget) other than capital expenditure and debt service.
        iv. Proprietary Fund Types. Measurements of target fund balances:
            1. Utilities. Operations - 25% of operating expenses for the fiscal year based on the current adopted budget.
            2. Internal Services. Operations - 25% of operating expenses for the fiscal year based on the current adopted budget.
            3. Workers Compensation. An amount equal to the State of Nevada required deposit, plus sufficient resources to cover the last determined open exposure for prior claims, if not covered by purchased insurance or a termination insurance policy.
            4. Operating expenses for the calculations in subsections (1) and (2) herein do not include depreciation or interest expense since they are covered by separate definitions.

    b. Definition of Stabilization Arrangement. In conformity with GASB Statement 54, the District may establish a stabilization arrangement only when it includes:

        i. Recognition of the authority by which the arrangement is established including resolution, ordinance or other action.
        ii. When to make additions to the stabilization amount
        iii. When stabilization amounts can be spent
        iv. That a balance will be reported at each fiscal year end.

    c. Other Classifications. The District will apply other classifications and accounting standards under GASB 54 including the use of Nonspendable, Restricted, Committed, Assigned, Unassigned and Unrestricted when presenting either a Statement of Net Position or other forms of fund balance in its financial reports.

15. The District shall maintain Working Capital in each Enterprise Fund in a manner which provides for contractual, bond and customer service obligations, while meeting its routine and non-routine cash flow requirements and complying with all federal, state and local statutes and regulations.

    a. SCOPE – This Code section shall require the District to apply accounting principles as forth in GAAP considering the unique characteristics of the District. To that end the following measurements will apply to each fund:

        i. Strength of collections of accounts receivable, to the extent they can be converted to cash within a timeframe expected for use in the District's operations.
        ii. Historical consumption of inventories and prepaid expenses, to the extent they can be utilized to support operations within the timeframe of the District's budget cycle.
        iii. Levels and flow of annual operating expenses. At no time will the calculation consider less than 45 days operating needs. However, any amount over 90 days needs must be specifically supported and approved in writing by the District's General Manager.
        iv. Support by the General Fund. This includes shared expenses and operating transfers that represent Central Services Cost Allocations.
        v. Control over rates and revenues.
        vi. Asset age and condition, whether there is a chance of extra ordinary repairs or a replacement under the Capital Improvement Plan.
        vii. Volatility of expenses and the ability to control fixed and variable costs.
        viii. Management plans for Working Capital including any inherent effects of Restricted Net Position or items extending beyond one year that would normally not be covered by Working Capital.
        ix. Debt Service or Multi-Year Capital Plan needs identified as current requirements.

    b. Definition of Target amounts for Working Capital as measured each Fiscal Year End

        i. Utilities
            1. Operations – 45 to 90 days of operating expenses (Operating expense excludes depreciation and interest.)
            2. Debt Service – up to one year's payments of interest expense, since current maturities of long term debt are already considered in determining working capital, when classified as a current liability.
            3. Capital Expenditure – up to 1 year of a 3 year average depreciation

c. Other Accumulation of Resources. The District may accumulate other resources in support of Debt Service or the Multi-Year Capital Plan in addition to Working Capital since these needs extend beyond the measurement period of one year.

Sources:

- Financial Standards Policy 2.1.0
- Performance Measurement for Decision Making Policy 4.1.0
- Budgeting for Results and Outcomes Policy 5.1.0
- Adoption of Financial Practices Policy 6.1.0
- Appropriate Level of Fund Balance Policy 7.1.0
- Capital Project Budgeting Policy 13.1.0
- Adoption of Central Service Cost Allocation Plan Policy 18.1.0
- Appropriate Level of Working Capital Policy 19.1.0
- Appropriate Level of Fund Balance Practice 7.2.0
- Appropriate Level of Working Capital Practice 19.2.0
- **Click here to review in original form:**
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Board_Practices_762016.pdf

APPENDIX: STATE BUDGET FORMS

The following are the Financial Compliance Forms prescribed by the State of Nevada:

- 4404LGF State Budget Forms
- 4410LGF Schedule of Indebtedness
- 4411LGF Five Year Capital Improvement Plan
- 4413LGF Budget Augmentation

5.01.020 Revenue

1. Sources of Revenue [WE NEED TO DEFINE THE SOURCES OF REVENUE THAT THE DISTRICT RECEIVES AND REFERENCE CORRESPONDING NRS OR COUNTY CODE]

   a. Taxes
   b. Assessments
   c. Recreation Fees
   d. Utility Fees
   e. Venue Revenues

2. Recreation Roll. IVGID will charge the prescribed Recreation Fee and the Beach Fee to all qualifying real properties within the boundaries of the District.

    a. IVGID will charge the prescribed Recreation Fee, and if applicable the Beach Fee, to all qualifying real properties in one of the following categories:

        i. All dwelling units on developed residential parcels;
        ii. All commercial parcels; and
        iii. All undeveloped residential parcels which are not designated as unbuildable.

    b. Definitions

        i. Recreation Fee is the annual Recreation Standby and Service Charge assessed by the District on all real property within the District that is in one of the categories listed in Section 1.0 of this document.
        ii. Beach Fee is the annual Recreation Standby and Service Charge assessed by the District on all identified real property that was within the District on June 1, 1968, and is in one of the categories listed in Section 1.0 of this document.
        iii. Recreation Roll is a listing created by IVGID of real property, using the Washoe County Assessor parcel number, that is in one of the categories listed in 1.0 of this document who pay the annual Recreation Fee, and where applicable the Beach Fee.
        iv. Dwelling Unit as described in the Washoe County Code as "any building or portion thereof, which contains living facilities with provisions for sleeping, eating, cooking, and sanitation."
        v. Qualified Real Property is property subject to payment of a Recreation Fee.
        vi. Exempt Real Property is real property that is located within the current geographic boundaries of the District but which Washoe County has exempted from paying Washoe County property tax.

            1. "Exempt Real Property" includes but is not limited to, real property that is used or intended for use for religious or educational purposes, condominium and town house common areas that do not include any Dwelling Units, and publicly owned property.
            2. The owner of a Dwelling Unit that is both located on an Exempt Real Parcel and is occupied as a residence in support of the allowed use by the Exempt Real Parcel may apply to the District to place that Dwelling Unit on the Recreation Roll. Upon (a) acceptance by the District of such application and (b) receipt of

payment of the prescribed annual Recreation Fee, and if applicable, the Beach Fee, the Dwelling Unit shall be considered to be Qualified Real Property; but only for so long as the ownership and use of such does not change materially.

vii. Unbuildable Parcel is a parcel so classified by Washoe County and is listed in Category 16 or 17 by the Washoe County Assessor, and has been removed from the Recreation Roll by the District following the owner's petition.

c. Qualifying Real Properties Subject to Fee Assessments

i. Real property in one of the categories listed in Section 1.0 that was within the boundaries of the District when it acquired the beach properties on June 1, 1968. These properties are charged the annual Recreation Fee and charged the annual Beach Fee.
ii. Where real property parcels have been split for development purposes, the resulting smaller parcels are considered to have the same qualifications as the original parcel.

d. Real Property Exempt from Paying Fee Assessments

i. When development takes place that results in new parcels or additional dwelling units, each new parcel or dwelling unit becomes a Qualified Real Property and is placed on the Recreation Roll.
ii. Information contained on the Washoe County Assessor's "Real Property Assessment Data" sheets will be used to determine eligibility for a property to be classified as a Qualified Real Property.
iii. Qualified Real Property that is added to the Recreation Roll as a result of conditions listed in paragraph 1 or 2 above, or by annexation or merger of territory to the District may be required to pay to the District an entry fee as established by the District based on the portion of the Recreation Fee and Beach Fee that was used for capital purposes.

e. Reinstatement to the Recreation Roll

i. An unbuildable parcel that has been removed from the Recreation Roll by petition can be restored to the Recreation Roll, and thereby have recreation privileges restored by first paying the total amount of recreation and, if applicable Beach Fees that had been have levied since the parcel was taken off the Recreation Roll, plus any fees or penalties permitted by the State of Nevada as defined in NRS 99.040(1).
ii. An exempt parcel not on the Recreation Roll may obtain a qualified status if the general plan and zoning designation of the property is changed by

Washoe County, according to the provision of NRS and Washoe County Code.

f. Setting and Collection of the Recreation Fee and the Beach Fee

i. The Board of Trustees will set the amount of the Recreation Fee and the Beach Fee annually as part of the budget preparation process.
ii. The Board of Trustees will set the method and manner of collection of the Recreation Fee and the Beach Fee annually by resolution. The Board of Trustees may choose to follow the procedure set forth in NRS 318.201 and have the Recreation and Beach Fees collected annually by the Washoe County Treasurer along with other taxes collected by the County.
iii. When the applicable Recreation Fee has been paid, such payment entitles the owner to certain uses and rates at certain District-owned recreation facilities, excluding the Beaches and Boat Launch. This is defined more fully in Title _____ of the Code. [District Ordinance #7].
iv. When the applicable Beach Fee has been paid, such payment entitles the owner to certain uses and rates at the District-owned Beaches and Boat Launch. This is defined more fully in Title _____ of the Code [District Ordinance #7.]

g. Flow Chart of Policy 16.1.1

i. [insert flow charter here]

Source: Recreation Roll Policy 16.1.0

- **Click here to review in original form:**
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf

5.01.030 Investments

1. The District will properly manage the risk in its portfolios to achieve investment objectives and comply with investment constraints.
2. The use of diversification in the District's portfolio is an important strategy for managing risk. Diversification strategies will consider the following:

   a. Carefully and clearly defining what the objectives mean for safety, liquidity, and return to the District.
   b. Preparing a cash flow projection to determine liquidity needs and the level and distribution of risk that is appropriate for the portfolio.
   c. Considering political climate, stakeholders' view toward risk, and risk tolerances.

d. Ensuring liquidity to meet ongoing obligations by investing a portion of the portfolio in readily available funds, such as Local Government Investment Pools (LGIPs), money market funds, or overnight repurchase agreements.
e. Establishing limits on positions in specific securities to protect against default risk.
f. Limiting investments in securities that have higher credit and/or market risks.
g. Defining parameters for maturity/duration ranges.
h. Establishing a targeted risk profile for the portfolio based on investment objectives and constraints, risk tolerances, liquidity requirements and the current risk/reward characteristics of the market.

3. The District will consider the following when using LGIPs:

   a. The District will confirm LGIPs are eligible investments under governing law and the District's Investment Management Policy.
   b. The District will fully understand the investment objectives, legal structure and operating procedures of the investment pool before placing any money in the pool. When evaluating an LGIP, the District obtains the pool's offering statement, investment policy, and audited financial statements.
   c. Particular attention must be paid to the investment objectives of a pool to determine whether a pool seeks to maintain a constant Net Asset Value (NAV) of $1.00 or could have a fluctuating NAV. This information is essential in order to determine which pools are appropriate for liquidity strategies (constant NAV) and which ones are only appropriate for longer-term strategies (fluctuating NAV).
   d. The pool's list of eligible securities should be reviewed to determine compliance with the District's Investment Management Policy. Portfolio maturity restrictions and diversification policies should be evaluated to determine potential market and credit risks.
   e. Portfolio pricing practices should be evaluated.
   f. Custodial policies should be reviewed.
   g. The qualifications and experience of the portfolio manager, management team and/or investment adviser should be evaluated.
   h. The earnings performance history should be studied and reviewed relative to other investment alternatives. On constant NAV LGIP funds, the current yield of the portfolio can be compared with competitive institutional money market funds, or overnight repurchase agreement rates.

4. The District shall invest public funds in a manner which provides the highest investment return consistent with the need for safety and liquidity, while meeting its routine and non-routine cash flow requirements and complying with all federal, state and local statutes and regulations governing the investment of public funds.
   a. SCOPE. This practice shall apply to all financial assets under the District's control or in its custody as accounted for in the District's financial accounting records

and reported in its periodic financial statements. These funds include financial assets held in the following fiscal entities:

Fund Type	District Fund Name
General	General Fund
Enterprise	Utility Fund
	Community Services Fund
Capital Improvement	
Internal Service	Fleet and Maintenance Fund
	Workers Compensation Fund
Special Assessment	
Debt Service	
Special Revenue	

All other funds, unless specifically excluded from this practice by Board of Trustees resolution.

b. PRUDENCE. The District intends to utilize standards established by the Uniform Prudent Investors Act. The Act has been adopted by the State of Nevada. The standard of care; portfolio strategy; risk and return objectives from the Act consider:

   i. The District shall invest and manage its assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the District. In satisfying this standard, the District shall exercise reasonable care, skill, and caution.
   ii. The District's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the District's portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the District's purposes.
   iii. Among circumstances that the District shall consider in investing and managing its assets are such of the following as are relevant:

      1. general economic conditions;
      2. the possible effect of inflation or deflation;
      3. the expected tax consequences of investment decisions or strategies;
      4. the role that each investment or course of action plays within the overall investment portfolio
      5. the expected total return from income and the appreciation of capital;
      6. other resources of the District needs for liquidity, regularity of income, and preservation or appreciation of capital; and

7. an asset's special relationship or special value, if any, to the purposes of the District

iv. The District shall make a reasonable effort to verify facts relevant to the investment and management of its assets.
v. The District may invest in any kind of property or type of investment consistent with the standards of this Practice.

c. FINANCIAL OBJECTIVES AND CONSTRAINTS. The District's primary investment objective is to obtain the maximum investment return in light of the following constraints:

i. Safety. Safety of principal is the foremost constraint of the District's investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
ii. Risk. To minimize the risk associated with any one security, diversification is required to ensure that the potential (or actual) losses on individual securities do not exceed the total return generated from the remainder of the portfolio.
iii. Liquidity. The District's portfolio shall remain sufficiently liquid - in terms of cash and near-term maturities of non-cash assets - to enable it to meet all operating requirements, and near term capital investment requirements, which are planned or which might be reasonably anticipated.
iv. Cash Flow Requirements. The size and composition (maturity, security type, etc.) of the District's portfolio(s) shall be determined so as to provide funds to meet the District's projected cash consumption requirements, over time.
v. Statutes and Regulations. At all times, the District's investments shall be restricted to those specifically identified within NRS 355.170, as amended from time to time, and any other statutes or regulations which may be promulgated by the State of Nevada or the United States Government.

d. DELEGATION OF AUTHORITY. Authority to manage the District's investment program is derived from the NRS Chapter 355.175, wherein the District's governing body may appoint an Investment Officer to handle the day-to-day administration of the program.

i. The Board of Trustees hereby expressly delegate Investment Officer responsibilities to the Director of Finance or to the General Manager in the Director's absence.
ii. This Code Section further requires that the Investment Officer shall establish written procedures for the operation of the program, consistent with this and other provisions of this investment policy.

iii. Such procedures shall include explicit delegation of authority to persons responsible for executing investment transactions, if other than the Investment Officer.
iv. No person shall engage in an investment transaction except as provided within this practice or the written procedures.
v. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials or third-party agents who assist in the investment program.

e. PORTFOLIO MANAGEMENT. The Investment Officer or their designee will routinely and continuously monitor the financial markets, the performance of the District's portfolio securities and competing securities instruments and adjust the District's portfolio, so as to accomplish the aforementioned investment objectives.

i. This portfolio management function may, subject to the District's Board of Trustees approval, be contracted out to one or more professional investment managers, knowledgeable in the markets, investment instruments and the District's unique constraints and investment needs. The investment manager(s) shall exercise discretion in its (their) decision-making with respect to portfolio transactions to the extent allowed within the constraints of this policy, unless specifically restricted in writing by the Board of Trustees
ii. Additionally, with respect to decisions which adversely impact the short-term performance of District portfolios, as in the instance where individual securities are liquidated at a loss in order to reposition the portfolio to maximize anticipated future returns, managers must first obtain the Investment Officer's concurrence prior to executing transactions which will result in losses which exceed 5% of an individual security's value or which will exceed, when aggregated, 2% of the value of the overall portfolio under management.

f. ETHICS AND CONFLICTS OF INTEREST. Officers, employees and agents involved in the investment process shall refrain from personal business activity that could conflict, or might appear to conflict, with the proper execution of the investment program, or which could impair their ability to make impartial investment decisions. All such individuals or firms shall disclose any material financial interests in financial institutions that conduct business with the District, and they shall further disclose any large personal financial/investment positions, if any, that could be related to the performance of the District's portfolio. Officers, employees and agents shall subordinate their personal investment transactions to those of the District's, particularly with regard to the timing of purchases and sales.

g. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS. The Investment Officer will maintain a list of financial institutions authorized to provide investment services. Additionally, a list of competent security broker/dealers shall be maintained. These may be primary dealers or regional dealers who qualify under Securities and Exchange Commission (SEC) Rule 15C3-1, Uniform Net Capital Rule.

   i. No public deposit shall be made except in a qualified public depository as established under NRS 356.
   ii. All financial institutions and broker/dealers who wish to become qualified for investment transactions must supply the Investment Officer with the following information, in order to demonstrate their economic viability: audited financial statements, proof of National Association of Securities Dealers certification, proof of state registration and certification of understanding and professed adherence to this Investment Management Practice in executing transactions.
   iii. The District will, at its option, establish relationships with one or more institutions or broker/dealers and its Investment Officer shall, at least annually, review the financial condition, registrations/certifications status and general performance of selected institutions or broker/dealers.

h. AUTHORIZED INVESTMENTS. The instruments which the District is authorized to hold are prescribed in NRS 355.170, as revised from time to time.

i. COLLATERALIZATION. Collateralization will be required on deposit-type securities - e.g., certificates of deposit and repurchase agreements - for deposits which exceed the insured limits of the securities under Federal Deposit Insurance Corporation (FDIC), Federal Saving and Loan Insurance Corporation (FSLIC), or other, successor federal deposit insurance program. Collateral will be limited to obligations of the United States and the State of Nevada and must, at all times, have a fair market value equal to or greater than the fair market value of the collateralized deposits. All other securities shall be collateralized by the actual security held in safekeeping by the appointed custodian.

j. SAFEKEEPING AND CUSTODY. All securities purchased by or on behalf of the District, excepting securities subject to repurchase by the seller, and all securities pledged as collateral pursuant to section 9.0, above, must be physically held by the District or its appointed custodian meeting the requirements of NRS 355.172, who shall hold the securities in trust for the District.

   i. Securities subject to repurchase by the seller may, in lieu of the requirement for possession, be evidenced by a fully perfected, first-priority security interest in those securities, held and acknowledged by the third party custodian.

ii. Securities so purchased must, at the time of purchase by the District, have a fair market value equal to or greater than the repurchase price of the securities.

k. DIVERSIFICATION. The District will diversify its portfolio by security type, maturity and issuing institution. Asset allocation guidelines, as deemed necessary from time to time, shall be prescribed by the District's Board of Trustees. Such asset allocation guidelines (maximum maturities) will be in writing and will become an integral part of this policy.

l. MAXIMUM MATURITIES. To the extent possible, the maturities of securities held within District portfolios shall be closely matched to the District's cash flow requirements for 1) day-to- day operations, 2) planned capital projects, 3) unknown future contingencies, and known or stated reserves in no event shall the District hold securities with maturities which exceed ten years, this being the maximum maturity allowed the District under NRS 355.170. Investments will be allocated to maturities that match the stated needs for which the District has established the Fund or account.

m. INTERNAL CONTROL. The Investment Officer shall establish a system of written internal controls which shall be reviewed for adequacy, annually, by the District's external auditors. The controls shall be designed to prevent loss of public funds arising from fraud or abuse, employee error, misrepresentation by third parties, or imprudent actions by officers, employees or agents of the District.

n. PERFORMANCE BENCHMARK STANDARDS. Theoretically, the District's investment portfolio would have a simple average maturity of less than five years. As a practical matter, the average maturity of the portfolio will vary as economic conditions change and will be dependent upon market factors and the actual investment strategy selected. Accordingly, for purposes of measuring and comparing returns among investments, the performance of District portfolio(s) shall be measured against the 1 year or less, 1-3 year, 1-5 year, and 1-10 year U.S. Government Treasury Indices.

o. REPORTING. The Investment Officer shall prepare a quarterly report of investment activity that will be made available to the Board of Trustees within thirty days of the close of the calendar quarter.

i. The report will include sufficient content to indicate how the District's investments are being managed to meet the objectives of safety, risk, liquidity, cash flow and regulations.

ii. The report shall contain a measure of the portfolio's return for the quarter, and when annualized shall compare its actual performance with the aforementioned benchmarks.

iii. At least once annually, and not later than sixty days after the close of the fiscal year, the Investment Officer shall present a comprehensive report summarizing the investment program's performance during the preceding twelve month period.

iv. This report shall contain, at a minimum, the same information required in the quarterly reports but, also, shall indicate areas of concern with respect to policy and strategy matters and shall recommend appropriate corrective action.
v. Additionally, at least quarterly, the Investment Officer shall prepare a projection of cash flows for the succeeding five year investment period.
vi. Estimates for the first two years of the investment period shall be on a quarterly basis, while estimates for the remaining periods may be on an annual basis. This cash flow projection shall serve as the basis for adjustments to asset allocations among and between the investment maturities.

p. INVESTMENT POLICY ADOPTION. This investment policy shall be adopted by motion of the District's Board of Trustees. It shall be reviewed at least annually and any modifications made hereto must be approved by the District's Board of Trustees.

Sources:

- Use of Local Government Investment Pools Policy 10.1.0
- Investment Management Policy 11.1.0
- Investment Management Practice 2.11.0
- **Click here to review in original form:**
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Board_Practices_762016.pdf

5.01.040 CAPITAL ASSETS

1. The best source of relevant information on the estimated useful lives of the District's capital assets comes from its own past experience with similar assets.
2. In situations where the documentation of the District's own past experience, for a given type of capital asset, is not adequate for this purpose, the District will consider the experience of other governments, professionally determined specifications, and private-sector enterprises.
3. The District will make whatever adjustments are needed to estimated useful lives that were obtained from others to ensure that such estimates are appropriate to its own particular circumstances.
4. It is especially important to consider the potential effect of each of the following factors when depending on the experience of others:

   a. Quality. Similar assets may differ substantially in quality, and hence in their useful lives, because of differences in materials, design and workmanship.
   b. Application. The useful life of a given type of capital asset may vary significantly depending upon its intended use.

c. Environment. Environmental conditions in the Tahoe Basin include climate and regulatory sources. Conditions can be defined by the Tahoe Regional Planning Agency, the United States Forest Service Basin Management Unit and the North Lake Tahoe Fire Protection District. The service life of some capital assets used in connection with highly regulated activities could be affected by these agencies codes or best management practices.
d. Life Cycle Considerations. The vast majority of the District's capital assets are used in conjunction with programming activities. Useful lives reflect the amount of utilization that will be consumed by an operating period and could affect the care and condition needed for services rendered by those venues. The District should also consider the possibility of varying useful lives for components of larger assets, both for capitalization and to reflect the appropriate life cycle maintenance interval for such components.
e. Maintenance. The potential effect of each of the factors just described may be mitigated or exacerbated as a consequence of the District's evaluation of capital asset care and condition, as well as the approach to maintenance and replacement policy. Once established, estimated useful lives for major categories of capital assets should be periodically compared with the District's actual experience and appropriate adjustments should be made to reflect this experience.

5. The District will consider the following guidelines in establishing capitalization thresholds:

a. Potentially capitalizable items should only be capitalized if they have an estimated useful life of greater than two years following the date of acquisition or placed into service.
b. Capitalization thresholds are best applied to individual items rather than to groups of similar items (e.g., desks and tables), unless the effect of doing so would be to eliminate a significant portion of total capital assets.
c. In no case will the District establish a capitalization threshold of less than $5,000 for any individual item.
d. In establishing capitalization thresholds, when the District is a recipient of Federal awards, then Federal requirements that prevent the use of capitalization thresholds in excess of certain specified maximum amounts for purposes of Federal reimbursement will prevail.
e. Capitalization of buildings and infrastructure should consider the use of componentization as a way to reflect the varying life cycle considerations of mechanical, structural elements, and wear items that may require different cycles of maintenance and replacement from the main asset being capitalized. The significance of such componentization takes precedent over the $5,000 threshold, and thus smaller amounts may be listed to facilitate proper asset management.

6. The District will prepare and adopt comprehensive multi-year capital plans to ensure effective management of capital assets.

    a. A prudent multi-year capital plan identifies and prioritizes expected needs based on a community's strategic plan, establishes project scope and cost, details estimated amounts of funding from various sources, and projects future operating and maintenance costs.
    b. The capital plan should cover a period of at least five years, preferably ten or more.
    c. Identify needs. The first step in the District's capital planning is identifying needs. The District has a commitment to the maintenance of its existing infrastructure. The District's Multi-Year Capital Plan will use information including development projections, strategic plans, comprehensive plans, facility master plans, regional plans, and citizen input processes to identify present and future service needs that require capital infrastructure or equipment. In this process, attention will be given to:

        i. Capital assets that require repair, maintenance, or replacement that, if not addressed, will result in higher costs in future years.
        ii. Infrastructure improvements needed to support new development or redevelopment.
        iii. Projects with revenue-generating potential.
        iv. Improvements that support economic development.
        v. Changes in policy or community needs.

    d. Determine costs. The full extent of project costs should be determined when developing the multi-year capital plan. Cost issues to consider include the following:

        i. The scope and timing of a planned project should be well defined in the early stages of the planning process.
        ii. The District should identify and use the most appropriate approaches, including outside assistance, when estimating project costs and potential revenues.
        iii. For projects programmed beyond the first year of the plan, the District should consider cost projections based on anticipated inflation.
        iv. The ongoing operating costs associated with each project should be quantified, and the sources of funding for those costs should be identified.
        v. A clear estimate of all major components required to implement a project should be outlined, including land acquisition needs, pre-design, design, and construction or acquisition, contingency and post-construction costs.

vi. Recognize the non-financial impacts of the project (e.g., environmental) on the community.

e. Prioritize capital requests. The District continually faces extensive capital needs and limited financial resources. Therefore, prioritizing capital project requests is a critical step in the capital plan preparation process. When evaluating projects the District will:

i. Categorize each submittal under Project Types:

1. Major Projects. A non-recurring project with scope and management complexity with a project budget greater than $1,000,000 and a 25-year minimum asset life.

a. New Initiatives – A project that creates a new amenity or significantly expands an existing facility with new programming, operations or capacities.
b. Existing Facilities – A project that maintains, renews, and re- invests in existing facilities without significantly adding new programming, operations or capacities.

2. Capital Improvement. A non-recurring project with some scope and management complexity with a project budget generally less than $1,000,000.

a. New Initiatives
b. Existing Facilities

3. Capital Maintenance. A generally recurring project at an existing facility with limited scope and management complexity and a project budget less than $1,000,000.

4. Rolling Stock. On-going projects for the replacement of vehicles, heavy and light duty wheeled and tracked machinery, tractors, mowers, trailers, etc.

5. Equipment & Software. On-going replacement of non-rolling stock and non- building system equipment (kitchen, ski rental, uniforms, furniture, service-ware, etc.), information technology hardware and software.

ii. Prioritize Projects under these criteria:

1. Priority 1 are projects that address Existing Facilities or replace existing assets via Capital Maintenance, Rolling Stock, or Equipment & Software projects that have reached or are near the end of useful life and are necessary to meet existing programming, operations, or capacities that the community wants, needs and uses.
2. Priority 2 are New Initiative projects that address existing facilities and assets that have reached or are near the end of useful life in order to expand existing programming, operations, or capacities to meet the community's wants, needs and uses.
3. Priority 3 are New Initiative projects that create new amenities that are wanted by the community and will be funded by new sources.
4. Priority 4 are New Initiative projects that create new amenities that are wanted by the community and will be funded by existing sources.

iii. Ongoing consideration of Project Types and Prioritization by District Staff will consider:

1. Reflect the relationship of project submittals to financial and governing policies, plans, and studies.
2. Allow venues to provide a prioritization recommendation.
3. Incorporate input and participation from major stakeholders and the general public.
4. The condition assessment of existing assets as it relates to asset life-cycle, industry best practices, manufacturer's guidelines, safety, and the aesthetic character of the facility.
5. Adhere to legal and regulatory requirements and/or mandates.
6. Anticipate the operations and operating budget impacts resulting from capital projects.
7. Apply analytical techniques, as appropriate, for evaluating potential projects (e.g., return on service, payback period, cost-benefit analysis, cash flow modeling).
8. Re-evaluate capital projects approved in previous multi- year capital plans.
9. The availability of outside funding (e.g. grants, direct community contribution, in-kind contribution, public private partnership) to support completion of a capital project.

iv. Develop financing strategies. The District recognizes the importance of establishing a viable financing approach for supporting the multi-year capital plan. Financing strategies should align with expected project

requirements while sustaining the financial health of the District. The capital financing plan should:

1. Anticipate expected revenue and expenditure trends, including their relationship to multi-year financial plans.
2. Prepare a flow of resources projection of the amount and timing of the capital financing and expenditure
3. Continue compliance with all established financial policies.
4. Recognize appropriate legal constraints.
5. Consider and estimate funding amounts from all appropriate funding alternatives.
6. Ensure reliability and stability of identified funding sources.
7. Evaluate the affordability of the financing strategy, including the impact on debt ratios, taxpayers, ratepayers, and others.

7. The capitalization threshold for all asset classes shall be identified during the budget process each fiscal year by the Finance and Accounting staff and approved by the Board of Trustees as part of the adoption of the annual Debt Management Policy, including the Five Year Capital Improvement Plan and its statement on minimum level of expenditure.

   a. The capitalization threshold per item shall be:

      i. ASSET CLASS: Equipment
         1. MINIMUM COST $5,000.00
      ii. ASSET CLASS: Structures and Land Improvements
         1. MINIMUM COST: $10,000.00

   b. In addition to cost, all of the following criteria shall also be used:

      i. The normal useful life of the item is three or more years.
      ii. The item has an acquisition cost (including freight and installation) of at least the amounts listed above in each asset class.
      iii. The item will not be substantially reduced in value by immediate use.
      iv. In case of repair or refurbishment that will be capitalized, the outlay will substantially prolong the life on an existing fixed asset or increase its productivity significantly, rather than merely returning the asset to a functioning unit or making repairs of a routine nature.
      v. The capitalization threshold is applied to individual items rather than to groups of similar items (e.g. desks and tables).
      vi. The utilization of componentization of assets under the project, to provide a more appropriate management of an assets care, condition and associate maintenance or replacement, takes precedent over the stated thresholds under section 1.1.

c. All fixed assets acquired either as operating or capital expenditures will be identified as IVGID property and recorded. Such items represent a value to the operations that have an ongoing usefulness to justify safeguarding them from loss or abuse. The items should be expected to be in service at least two years and can be readily assigned to a function or activity as responsible for its care and condition.

Sources:

- Establishing the Estimated Useful Lives of Capital Assets Policy 8.1.0
- Establishing Appropriate Capitalization Threshold for Capital Assets Policy 9.1.0
- Multi-Year Capital Planning Policy 12.1.0
- Capitalization of Fixed Assets Practice 2.9.0
- **Click here to review in original form:**
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Board_Practices_762016.pdf

5.01.060 Debt Management

1. The District shall adopt comprehensive written debt management practices and they will be reviewed annually in conjunction with the budget process and revised as necessary.
2. Debt Limits. The Practice will define specific limits or acceptable ranges for each type of debt. Limits are generally set for legal, public policy, and financial reasons.

    a. Legal limits may be determined by:

        i. State constitution or law.
        ii. Local resolution or ordinance, or covenant.

    b. Public Policy limits can include:

        i. Purposes for which debt proceeds may be used or prohibited.
        ii. Types of debt that may be issued or prohibited.
        iii. Relationship to and integration with the Multi-Year Capital Planning.
        iv. Policy goals related to economic development, capital improvement financings, tax increment financing, and public-private partnerships.

    c. Financial limits generally reflect public policy or other financial resource constraints, such as reduced use of a particular type of debt due to changing financial conditions. Appropriate debt limits can positively impact bond ratings, if

the District demonstrates adherence to such policies over time. Debt limits will be stated as follows:

d. Direct Debt can be measured or limited by the following ratios:

   i. Debt per capita,
   ii. Debt to taxable property value
   iii. General Obligation debt service payments as a percentage of governmental fund type revenues or expenditures.

e. Revenue Debt levels are often limited by debt service coverage ratios or credit rating impacts contained in bond covenants.

f. Short-Term Debt Issuance should describe the specific purposes and circumstances under which it can be used, as well as limitations in term or size of borrowing.

3. Debt Structuring Practices. The Practice will include specifics regarding the debt structuring practices for each type of bond, including:

   a. Maximum term stated in absolute terms or based on the useful life of the asset(s);
   b. Average maturity;
   c. Debt service pattern such as equal payments or equal principal amortization;
   d. Use of optional redemption features that reflect market conditions and/or needs of the government;
   e. Use of variable or fixed-rate debt, credit enhancements, short-term debt, and limitations as to when each can be used;
   f. Other structuring practices should be considered such as capitalized interest, deferral of principal and/or other internal credit support including general obligation pledges.

4. Debt Issuance Practices. The Practice will provide guidance regarding the issuance process, which may differ for each type of debt. These practices include:

   a. Criteria for determining the sale method (competitive, negotiated, placement) and investment of proceeds,
   b. Criteria for issuance of advance refunding and current refunding bonds,
   c. Selection and use of professional service providers,
   d. Use of comparative bond pricing services or market indices as a benchmark in negotiated transactions, as well as to evaluate final bond pricing results, and
   e. Use of credit ratings, minimum bond ratings, determination of the number of ratings, and selection of rating services.

5. Debt Management Practices. The Practice will provide guidance for ongoing administrative activities including:

    a. Investment of bond proceeds,
    b. Primary and secondary market disclosure practices, including annual certifications as required,
    c. Arbitrage rebate monitoring and filing,
    d. Federal and state law compliance practices, and
    e. Market and investor relations efforts.

6. To ensure that debt principal and interest payments are made on a timely and cost effective basis, the District will manage debt service as follows:

    a. The District will ensure that all parties responsible for making debt service payments fulfill their fiduciary and operational responsibilities. The negotiation of contract terms should serve the District, the trustee/fiscal agent/paying agent and the bondholders and include:

        i. requirements for timely payment of all funds on the due date;
        ii. full utilization of funds by the District until the due date;
        iii. requirement for use of electronic fund transfer throughout the payment process; and
        iv. requirements that all parties execute transactions in the most cost efficient and effective manner.

    b. The District will ensure that appropriate contractual terms and internal procedures are in place. The District will negotiate terms allowing for full investment of funds by the District until the payment due date by utilizing electronic fund transfer.
    c. The District will require that trustees/fiscal agents/paying agents invoice the District for debt service payments a minimum of 30 days prior to the due date.
    d. The District will use electronic fund transfer to assure transfer to the trustee/fiscal agent/paying agent on the payment date. If payment must be made by check, the District will ensure paying the check no more than five (5) days prior to the payment date through a guaranteed delivery service.
    e. The District will ensure that all parties to the transaction (internal and external) are kept informed of the procedures established.

7. To ensure that debt, through the issuance of bonds or other long term indebtedness, is limited to appropriate levels, the District will manage outstanding bonds and installment purchase obligations through a measure of affordability as follows:

    a. The District will ensure that all bonded indebtedness is analyzed and validated by comparing the consequences of the debt issuance against the District's Debt

Coverage Ratio. Debt issued for non- utility purposes must remain within a Debt Coverage Ratio of at least 1.5 times. Debt issued for utility purposes must remain within a Debt Coverage Ratio of 1.75 times.

i. Under this Code section, "utility" purposes are those related to only water and sewer functions.
ii. The Debt Service Coverage Ratio will be determined by dividing the operating or other available revenues less operating expenses other than depreciation and interest by the annual principal and interest payments.
iii. The ratio will be stated in the number of times the net revenue covers the annual debt service.
iv. The process of analysis and validation will consider the projected amounts for each year the issue will be outstanding. An acceptable result will include meeting the standard on average over the life of the issue in question. However, the coverage ratio in any one year cannot go below 1.0.

b. The District will consider issuing a bond for any non-"utility" project or group of projects, when that totals more than $2,500,000 and can be repaid within 10 years of issuance. The District will consider issuing a bond for a period longer than 10 years when it is necessary for the economic feasibility of the project.
c. The District will consider issuing a bond for any "utility" project or group of projects, when that totals more than $2,500,000 and can be repaid within 20 years of the completion of the project acquisition or construction. The additional time allowed is in recognition of that maturity under the Nevada State Revolving Fund Loan Program. Shorter maturities are preferred whenever feasible.
d. The effective limitation on the total of bonds outstanding at a given point of time is expected to be a function of the feasibility in the marketplace for a proposed issue, combined with the District existing Bond Rating, the financial projections of the District and the ability to sell bonds within the projected parameters.
e. Consideration of the use of installment purchase obligations will be conducted according to NRS. This form of financing is also referred to as municipal leasing, can be considered for a project or group of projects when that totals more than $250,000 and can be repaid within 10 years of issuance (in effect requiring the obligation to comply with Medium Term Financing guidelines).
f. This Code Section is expected to be reviewed and updated from time to time to validate the coverage ratio and the dollar and maturity limits used to establish acceptance for issuance of bonded indebtedness. That review should occur in conjunction with the adoption of the Debt Management Policy.

Sources:

- Debt Management and Limits Policy 14.1.0
- Debt Service Payment Settlement Practice 14.2.0
- Debt Issuance Limitations Practice 14.2.1

- **Click here to review in original form:**
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf
  - https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Board_Practices_762016.pdf

APPENDIX

INDEBTEDNESS REPORT
DEPARTMENT OF TAXATION Guidance for medium term bonds

5.01.070 Reports [reserved]

5.01.090 Penalties and Interest Charges on Delinquent Accounts and Collection Thereof

1. NRS 318.197 provides that the Board of Trustees may establish:
   a. a basic penalty for the nonpayment of charges within the time and in the manner prescribed by it.
   b. a penalty per month for nonpayment of the charges and basic penalty.
   c. the method for collecting the charges for any service in accordance with this section.
2. The District shall pursue diligent efforts in collecting charges for services.
3. The District shall charge a basic penalty of 10% for the nonpayment of charges throughout the District.
4. In addition to the basic penalty in Section (3) of this Code Section, a 1.5% penalty per month for nonpayment of the charges and basic penalty.
5. The basic penalty and additional penalty identified in Section (3) and (4) of this Code Section shall become effective in accordance with the following schedule:
   a. that the basic penalty be added when the charges are 30 days delinquent;
   b. that the additional penalty be added when the charges are 60 days delinquent;
   c. that the charges constitute a perpetual lien on and against the property served; and
   d. such notice of lien shall be served when the charges are 70 days delinquent.

Source: Resolution No. 1538 A Resolution Establishing Penalty and Interest Charges on Delinquent Accounts and Collection Thereof; click here to review in original form: https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf

5.01.100 Audits

1. The District is committed to be proactive, informed, and providing the highest form of financial accountability to its parcel owners. Achieving this goal requires clear rules and procedures for making decisions and their impact on financial results. As required by NRS 354.624, each local government shall provide for an annual independent audit of all of its financial statements.
2. The independent auditor reports directly to the Audit Committee as established under Section 2.01.17(1).

Source: Audit Committee Policy 15.1.0; click here to review in original form:
https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf

Appendix: Current Annual Budget
Appendix: Current Audit
Appendix: NRS Chapter 354 "The Local Government Budget and Finance Act"

CHAPTER 5.02 ACQUISITION, DISPOSITION & ENCUMBRANCE OF REAL & PERSONAL PROPERTY

5.02.010 Real Property

1. [RESERVED]
2. [RESERVED]
3. Rough draft of possible Code language for Non-Operational Land Holdings. The District will properly manage the risk and responsibilities in its portfolios of Non-Operational Land Holdings to achieve investment and service objectives. The future planned use of the parcels of land under the District's ownership is an important strategy for availability of service as a government. That includes the consideration of making designated properties available for use for recreation opportunities for generations to come. The District will:

    a. Carefully and clearly define what the objectives are for acquisition, holding (for recreation purposes) or reselling (for returning properties to the tax or facility fee roll) of non-operational land parcels. Non-operating parcels are generally not incorporated into an IVGID venue or its structures or improvements.
    b. Maintain a projection for costs to carry ownership into the future.
    c. Considering the political climate and stakeholders' view toward accumulation of parcels for any stated purpose.
    d. Consider the opportunity costs to not acting upon land acquisition or by claiming tax delinquent parcels when the possibility exists.

e. Consider limits on the amount invested, or the quantity of properties acquired for resale, or for the return to the tax or facility fee rolls based on marketability and best use of public funds.
f. Consider the legal compliance aspects of acquiring tax forfeit properties and the possibility of honoring a redemption period before the District can act.
g. Establish that parcels acquired for recreation purposes, as defined by their deed, will not be considered available for resale except to another governmental agency.
h. Establish that resale of parcels will not be offered in a manner that conflicts with free market listings of similarly situated properties by way of price or terms.
i. Include an analysis of the inventory and class of coverage, as defined by the Tahoe Regional Planning Agency, held by the District and whether it should be placed with the State of Nevada for sale.
j. Periodically report on the Non-Operational Land Holdings and coverage inventory to maintain an awareness of the extent and purpose of these District assets.

4. COVERAGE?

5.02.011 Personal Property [RESERVED]

5.02.012 Leases

1. State Guidance letter 16-004 concerning, "GASB standards on Lease Accounting; Requirements for Reporting Installment-purchase Agreements; and Types of Installment-purchase Agreements and Medium Term Obligations Subject to Approval by the Department of Taxation," is hereby incorporated by reference as the District's policy and procedure regarding leasing.
2. [RESERVED]
3. [RESERVED]

5.02.013 Easements

1. Easements Across Property Owned by IVGID.

    a. The process should be initiated by a letter request of the property owner, detailing the following:

        i. Complete legal description of the easement, accompanied by a plat map with a sketch of the easement. If public utilities are located within or to the easement, or , in the opinion of the General Manager, other property characteristics make a survey desirable, a certified survey shall also be furnished by the property owners.

ii. Description of the applicant's property to be benefited, together with a plat map.
iii. Specific reasons for the request.
iv. Whether the easement will be exclusive or non- exclusive.
v. Estimate of the market value of the easement.

b. The letter application must be accompanied by a non-refundable application fee in the amount of One Hundred Dollars ($100.00) to cover the administrative processing cost. The applicant also must agree to reimburse IVGID for the District's out-of-pocket expenses for surveys, title research and attorney fees in relation to the easement.
c. Written notice of the District's intention to consider a request for easement must be given to owners of property within three hundred (300) feet of the affected District property at least thirty (30) days prior to the date the request will be considered.
d. The District staff will evaluate each request on a case- by-case basis to make a recommendation to the General Manager. All costs of any survey, engineering, or improvements to the easement shall be borne by the applicant.
e. If the requested easement requires improvements, plans for the improvements shall be attached to the easement application and a performance bond must be provided upon execution of the easement document to ensure completion. If the easement requires maintenance, a covenant must be included in the easement document binding applicant and his successors to perform such maintenance.
f. The easement document will provide for insurance, maintenance and other items that may be recommended by staff based on a case-by-case review.
g. Once executed, the easement document will be recorded by the property owner and a copy of the recorded document furnished to IVGID.
h. The granting of any easement will be completely discretionary with the District General Manager. District General Manager actions shall not constitute a precedent.
i. In general, the District General Manager will not grant an easement that may interfere with the present or future operations of the District.
j. In considering an application for easement, the District General Manager shall consider the property owner's need for the easement, impact upon District operations, future plans for the property, the degree to which the easement restricts future use of the property, environmental matters, safety matters, impact upon adjacent properties and the surrounding neighborhood, and other matters the District General Manager deems pertinent and appropriate.
k. If there is a benefit to the District because of easement improvements or other mitigation measures, the staff and District General Manager will consider this in setting a price for the easement. The price set for the easement will also be determined in relation to the value added to the property as well as any detriment to the District.

l. The District General Manager may require an appraisal of any proposed easement, if in his judgement the market value of the easement is not clear and the easement may be sufficiently valuable to warrant the expense of an appraisal. If an appraisal is required by IVGID, all expenses pertaining thereto shall be paid for by the property owner.

m. If improvements within the easement require permits from any local, regional, state or federal agency, or if the easement is associated with any project which otherwise requires such permits, and all such permits have not been obtained, the easement shall expire in one year or at other such time stated in the easement, if all such permits are not obtained by such time by the property owner.

2. Relinquishment and Acquisition of Utility Easements and Encroachment Agreements

a. The District is engaged in providing utility services within its service areas, under the authority vested in it by NRS 318.116(10) and (14) and Washoe County Ordinance No. 97 (As Amended May 20, 1961); and,

b. The District is the Owner and holder of certain perpetual easement(s) and right(s) of way over and through the lands within IVGID's jurisdictional boundaries; and,

c. A number of the sewer and water mains, pipelines and other utility facilities are fully outside of or partially outside of the above-described IVGID easements; and,

d. Numerous instances of landowner caused improvements exist within the rights of way, easements and line locations which obstruct or, with the passage of time, will obstruct IVGID's ability to service of maintain its sewer and water mains; that a vast majority of said improvements are of a landscaping nature including, but not limited to, fencing, patios, rock gardens and planting areas; that it is expected that these owner caused encroachments would add substantially to the cost of maintenance if IVGID were to be responsible for same; and,

e. It is necessary and appropriate for IVGID to enter into encroachment agreements with land owners wherein the costs associated with removal and replacement of encroaching improvements are borne by the landowner thereby minimizing costs that would inevitably be borne by all District users; and,

f. It is necessary and appropriate for IVGID to abandon portions of some of the existing easements, and, in some cases, all portions thereof, or to realign or re-establish the existing easement(s) on the same parcel or parcels under a common ownership; and,

g. Pursuant to NRS 318.160, which governs IVGID'S acquisition, disposal and transfer of real property, including easements and rights-of-way, the IVGID Board of Trustees wish to authorize IVGID's Director of Public Works to negotiate the complete or partial abandonment/relinquishment of existing easement(s) and rights-of-way or encroachment agreement items, in consideration of IVGID's

obtaining of entirely new or partially new easement or right-of-way routes or agreements by landowners, such authority to include said Director's right, on behalf of IVGID, to sign and execute such abandonment/ acquisition and encroachment agreements, subject to the Board's right to question and object to same, as provided for here under. The sample Encroachment Agreement and the sample Quitclaim Deed, same to be utilized in these transactions are attached hereto and incorporated herein by reference thereto.

h. Any such transactions shall be subject to any IVGID Trustee's right to request Board of Trustees review, consideration and possible reconsideration of any such proposed abandonment/acquisition or encroachment agreement.
i. It is anticipated that all or substantially all of said easement negotiations and relocations will be made without the exchange of monetary or other legal consideration from IVGID beyond that which is inherently a part of the exchange of the relinquished easement(s) and the new or modified one(s).
j. Any exchanges that may require any additional legal consideration, beyond Two Thousand Dollars ($2,000.00), are subject to the Board of Trustees prior approval.
k. Under NRS 318.160 this Board of Trustees has the authority to acquire, transfer and dispose of real property, including easements.
l. IVGID utility improvements upon servient properties owned by IVGID utility users are actually located partially outside of, with a number entirely outside of their respective easements; that IVGID correspondingly determines that it is in IVGID's best interest to abandon/relinquish any such existing easements which are no longer necessary or useful in IVGID's utility operations or for future expansion of IVGID utility systems.
m. The foregoing action is both necessary and appropriate to allow the effective negotiation by IVGID with the same property owners whose property is subject to the existing easements as well as the sought-after new or modified easements that do contain existing utility improvements or will contain such, or which are otherwise for the operation and maintenance of IVGID utility systems.
n. Due to this Board of Trustees already burdened calendar/agenda, which burden is expected to increase even without the routine consideration of matters such as these, and for purposes of economics and expediency in general, this Board of Trustees conditionally delegates its authority to enter into the abandonment and acquisition of utility easements and execution of encroachment agreements, to IVGID's Director of Public Works so that the Director may negotiate with the respective property owner(s) and consummate said agreements, subject to the provisions hereunder. Any such proposed agreement shall be subject to the right of any Trustee to request Board of Trustees review of and possible reconsideration of the appropriateness or propriety of the proposed agreement. Such reconsideration shall include the right of this Board of Trustees to confirm or modify the proposed Agreement in whole or in part.
o. A summary of any such referenced deed or agreement, as the case may be, showing the nature of the proposed transaction, with the salient facts, shall be

furnished to each Trustee, at least ten (10) days prior to the Director of Public Works' execution of same, so that each Trustee will have the opportunity to place the question of the appropriateness or propriety of such agreement on a regular Board of Trustees meeting agenda, such agendizing to comply with the prescriptions of NRS 241. Absent any such request, the Director of Public Works shall then have the right to execute any documents essential to the consummation of the transaction.

p. Amongst other appropriate provisions, any such agreement(s) shall require that the respective User/Property Owner shall indemnify and hold harmless IVGID and its directors, officers and employees from and against any and all actions, causes of action or suits, costs, claims, demands, expense, loss or liability for any injury to or death of any persons, or damage to any property, including IVGIDs, User's or any third party, arising out of or in any way connected with the common use or occupancy of the said right(s) of way, easement(s)/location(s).
q. Any such agreements shall, amongst other things, further provide that the benefits and burdens of the Agreement(s) run with the land.
r. Notwithstanding anything herein contained to the contrary, it is further resolved that any proposed exchanges and proposed agreements that involve an exchange of pecuniary or other legal consideration, in an amount exceeding Two Thousand Dollars ($2,000.00), which additional consideration is potentially payable by IVGID, shall be first reviewed by this Board of Trustees as a condition precedent to their being executed.

Sources:

- Policy Resolution No. 103 (Resolution 1475) Establishing a Policy for the Granting of Easement Across District Property
- Policy Resolution No. 129 (Resolution No. 1632) Relinquishment and Acquisition of Utility Easements and Encroachment Agreements
- Click here to review in original form: https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf

5.02.014 Liens [reserved]

5.02.015 Use of IVGID Facilities

1. Use Of District Facilities By Qualified Local Non-Profit, Volunteer Organization, National Organization With A Local Chapter, Or Activity Based In Or Benefitting Incline Village/Crystal Bay, North Tahoe Region, Government Agency, Or A Local School, That Administers And Conducts The Activity Themselves.

    a. The District shall receive and review requests for activities at its facilities by local non-profit, volunteer organization, national organization with a local chapter, or activity based in or benefitting Incline Village/Crystal Bay, North Tahoe Region,

government agency, or a local school, that administers and conducts the activity themselves.

b. This Code section will provide staff with guidance when administering a consistent policy throughout IVGID.
c. Activities that fit within the following criteria set forth in this Code Section will be allowed, upon approval by the appropriate level of management up to and including the Board of Trustees.
d. POLICY AND PROCEDURE STEP 1 APPLICABLE TO ALL ACTIVITIES

   i. The sponsor must be a qualified local non-profit, volunteer organization, national organization with a local chapter, or activity (as outlined later in this document) based in or benefitting Incline Village/Crystal Bay, North Tahoe Region, government agency, or a local school, that administers and conducts the activity themselves.
   ii. Request will be considered on a first-come, first-served basis and use of District facilities will be evaluated on a venue by venue basis balancing capacity and the resident's needs as the key criteria. All requests will be made to the applicable District Venue Manager.
   iii. The activity must not be for commercial or personal gain with the exception that business collaboration results in advertisements and its benefit to business.
   iv. The activity must be overseen by the sponsoring organization and a lead individual identified to handle details up and through the day of the event. This person must be someone who is in attendance at all times the day of the event.
   v. IVGID will have no responsibility for the administration of the event or for the funds collected by the activity.
   vi. When applicable, the sponsor must provide insurance, list IVGID as an additional insured (when applicable) and any other paperwork required by the District Risk Manager.
   vii. The sponsor of the activity will agree to indemnify and hold the District harmless from any claims arising out of the activity.
   viii. The profits derived from the activity must materially benefit the community of Incline Village/Crystal Bay, and be used within the North Tahoe Basin for the length of their useful life.
   ix. A signed contract and applicable paperwork are to be executed not less than thirty (30) days prior to the event. If the event is cancelled within 30 days of the event, the deposit may be forfeited.
   x. Qualified, non-profit, volunteer organization or activity requests are to be ranked and evaluated in accordance with the Internal Revenue Service (IRS) Code as follows:

      1. IRS Code 501(c) (3), tax-exempt organizations. The organization description must fit one of the following: Charitable, religious,

educational, scientific, literary, and testing for Public Safety, foster national or international amateur sports, or prevention of cruelty to children or animals.

2. Other tax-exempt IRS Code 501 (c) organizations, such as Civic Leagues, Social Welfare Organizations, Labor, Agricultural, and Horticultural organization, Business Leagues, Veterans' Organization, and Chamber of Commerce.

xi. In all cases, an IRS letter of determination is to be provided to the District (or on file with the District) as documentation of status. The letter of determination shall be provided at the time of request.

xii. All events, as a minimum, will be charged a $50 Administrative charge which is to cover the required paperwork, etc.

xiii. The attached application is required for each event and is herewith incorporated and made effective as of July 1, 2013.

xiv. During the budget cycle, the Board of Trustees approves the District's Key Rates which include the rack rate for each District venue. This is the guiding document for each District Venue Manager to make their discounting decision, using yield management, for each event/venue.

xv. Within sixty (60) days of the conclusion of the activity, the sponsoring organization must submit a financial statement to the District Venue Manager, giving details of income and expenses for the activity and expected contributions to the beneficiary(ies). If sponsor does not provide an activity financial statement within the stated timeframes, they will not be allowed to hold another activity at District facilities for one year.

e. POLICY AND PROCEDURE STEP 2 REQUIREMENTS FOR EACH OF THE DISTRICT VENUES

i. GOLF VENUES. The sponsor must apply in advance, in writing, to the District Venue Manager.

1. The following is to be included in the request:

a. Details of the activity (including, but not limited to, proposed date of activity, proposed venue, etc.)
b. Projected finances and how funds are to be distributed
c. Beneficiary of the event (who is it and where do they reside)
d. Geographical area served
e. IRS Letter of Determination

2. Availability of Golf Courses

a. Golf activities: It is strongly recommended that charity tournaments be held prior to June 15 and after September 15 on the Championship Course.
b. Golf activities: It is strongly recommended that charity tournaments be held prior to July 1 and after September 15 on the Mountain Course.
c. Should a charity tournament desire a date before or after those listed in a. or b. above, it is the representative's responsibility to discuss their desire with the District Venue Manager who will make the determination.

3. Charges To Use Each Golf Course

    a. Golf activities will be charged on the Championship Golf Course as determined during the annual budget process.
    b. The Mountain Golf Course will be offered as determined during the annual budget process.

4. Event organizers shall be encouraged to plan golf activities on Mondays through Thursdays in the afternoon.

5. If the activity is cancelled ninety (90) days prior to the scheduled activity, the group will forfeit their deposit fee.

ii. CHATEAU AND ASPEN GROVE VENUES

1. The following shall apply in addition to Policy and Procedure Step 1. listed above. The full rack rate prices in place is the basis for the non-profit discounting as outlined below for high season and low season (Blackout dates apply to high season dates).The Chateau and Aspen Grove Facilities, discounts to non-profits will be set each year during the budget process.

2. At the discretion of the Chateau and Aspen Grove sales team, with the approval of the Sales Manager and/or the Director of Finance greater discounting or a further advanced reservation can occur if the following conditions exist:

    a. The date being requested is unsold; and
    b. the likelihood of selling the date is quickly diminishing; and
    c. the activity will engage in other District ancillary revenue producing areas such as catering and golf outings during the activity.

3. High and Low season and Midweek dates are defined as follows:

    a. High Season dates are May through October and December

        i. Mid-week (Monday through Thursday) may be reserved up to 3 months prior to the requested date
        ii. Friday and Sunday may be reserved up to 2 months prior to the requested date

    b. Low Season dates January through April and November

        i. Mid-week (Monday through Thursday) may be reserved up to 6 months prior to the requested date
        ii. Friday, Sunday and Holidays may be reserved up to 2 months prior to the requested date

    c. Blackout Dates are High Season dates Friday through Sunday that are charged at the full rack rate. Discounting may be available at the discretion of the District General Manager

    d. Saturdays and Holidays may be made available at the discretion of the District General Manager.

iii. DIAMOND PEAK SKI RESORT (EXCLUDING SNOWFLAKE LODGE)

1. The following shall apply in addition to the Policy and Procedure Step 1. listed above.
2. The use of Diamond Peak Ski Resort for activities will be at the discretion of the Venue Manager.
3. The time of the year, capacity and the availability of Diamond Peak resort and its facilities will be factors for consideration for discounting.
4. Snowflake Lodge, whose use is already limited by a Tahoe Regional Planning Agency use permit, is excluded from this resolution.

iv. PARKS AND RECREATION VENUES (EXCLUDING BEACHES)

1. The following shall apply in addition to the Policy and Procedure Step 1. listed above.

2. The use of Parks, Recreation Center, and Tennis Courts for activities will be at the discretion of the Venue Manager.
3. The time of the year, capacity and availability of recreational facilities will be factors for consideration for discounting.

v. ALL BEACHES

1. All of the beaches within IVGID have restricted access and are available for the exclusive use of the Incline Village property owners. On a case by case basis, uses of the beaches by a qualified, non-profit, volunteer organization or activity based in Incline Village will be directed, for possible consideration, to the District Venue Manager.

f. APPENDIX: Application

2. Access to District Property and the Use of District Facilities for Expression.

a. The District owns real property and facilities that it uses to fulfill its special purposes, and those uses by the District take precedence over any other activity or use.
b. The District recognizes that public expression, speech and assembly is a fundamental right. The District must, however, balance the exercise of that fundamental right with its significant interests to:

i. satisfy its special purposes;
ii. assure orderly conduct;
iii. protect the rights of persons authorized to use District real property and facilities to the unique recreational experiences provided by the natural environment of such real property and facilities;
iv. protect and preserve the unique environment on which the various District properties and facilities reside;
v. reasonably provide an opportunity for access to the District community for expression; and,
vi. reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility.

c. The District designates public forum areas within its real property and facilities, and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this Policy.
d. The District will not further regulate such exercise except as consistent with applicable law.

e. In order to preserve the peace, however, and to promote the significant interests of the District, including those listed above, the District may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly.

f. DESIGNATION OF PUBLIC FORUM AREAS

i. The District designates as public forum areas the following:

1. General Areas of Real Property

a. the parking lots,
b. the walkways within and adjacent to the parking lots, and
c. the sidewalks adjacent to any public entrance to any building open to the public, located on such listed real properties and facilities.
d. A copy of this Code Section and related Appendix material shall be available at each such real property and facility, and shall also be available at the District Administrative Office.

2. Facilities, Fields, and Venues

a. Administration Building
b. Recreation Center
c. Tennis Complex
d. Chateau
e. Diamond Peak
f. Preston Field
g. Mountain Golf Course
h. Burnt Cedar Beach
i. Incline Beach
j. Ski Beach
k. Aspen Grove—Village Green
l. Skateboard Park
m. Bike Park

ii. The designated public forum areas as described above for the real properties and facilities are areas where all persons may exercise the activities of expression, speech and assembly, to the extent permitted by law and this Code Section and any other rules and regulations which the District may adopt.

iii. Such activities must be consistent with the maintenance and operation of District real properties and facilities, and must not interfere with the

intended use of such facilities, or with parking, the flow of vehicular traffic, and ingress to and egress from the property and all buildings and facilities. Such activities must not create an imminent health or safety hazard or result in a violation of the privacy or rights of others.

iv. The location and size of the designated public forum areas constitutes an appropriate balance of the significant interests of the District with the recognized right of expression, speech and assembly.

v. While it is the District's intention to assure use of the designated public forum areas for each real property and facility for the purpose of expression, speech and assembly, some of the real properties and facilities may have existing practical limitations.

vi. The District may make additional reasonable rules and regulations for the use of each real property and facility as it determines to be necessary.

g. BOARDROOM. The Boardroom at the District Administrative Office is also available for expression, speech and assembly consistent with the provisions of NRS 241.020(3).

h. NON-PUBLIC FORUM AREAS. The portions of the District real properties and facilities listed in Subsection (f) and not designated in this Policy as a public forum area, and all other District real properties and facilities where public access may be limited or restricted are deemed to be and are designated as "non- public forum areas," including but not limited to:

i. Public Works Building
ii. Water Treatment Plant
iii. Wastewater Treatment Plant
iv. Wetlands Effluent Disposal Facility
v. Sewer Pumping Station
vi. Water Pumping Stations
vii. Spooner Effluent Pumping Station
viii. Water Storage Reservoirs and Tanks
ix. Parks Storage Building
x. Overflow Parking Lot

i. MAPS. See Appendix

3. NAMING/DEDICATION OF IVGID FACILITIES AND ACKNOWLEDGING IMPORTANT LOCAL PERSONS, EVENTS, OR HISTORY

a. The District may receive requests from its citizens to name and/or dedicate facilities and/or place plaques, markers, or other items indicating acknowledgement, tribute, or remembrance which will be long-term symbols for all to see.

b. The District has a relationship with the Incline-Tahoe Parks and Recreation Vision Foundation, Inc. (the Foundation) who (A) wishes to support IVGID's Community Services Fund and has the opportunity to accomplish more than public funding allows, (B) the private nature of the Foundation also provides the added advantage of dedicated donor services, (C) IVGID wishes to benefit from the fundraising activities of the Foundation, and (D) promote a positive relationship with their Staff, Board of Directors and volunteers. ITF will bring projects forward to District staff and once the fit is determined to be appropriate, all parties will work to draft a Project Agreement. All Project Agreements must be approved by the Board of Trustees in an open, noticed, and public meeting. All Project Agreements will include a naming menu for approval.

c. POLICY AND PROCEDURE APPLICABLE TO ALL ACTIVITIES

i. A detailed resume and justification, including background, and any historical information as to the relevance and benefit to the District or local area shall be submitted. Names submitted for individual (living or dead) should be those who have contributed greatly to the community and shall be in accordance with NRS 338.200 which reads as follows:

> NRS 338.200 Prohibition against naming public building or structure after current member of governing body. No public building or other public structure, other than a street or road, may be named after a person who is at the time a member of the governing body which has jurisdiction or control over the building or structure or which is responsible for it. (Added to NRS by 1981, 1337)

ii. Funding, if applicable, shall be done solely through the Incline-Tahoe Parks and Recreation Vision Foundation, Inc. with approval by IVGID as to the suitable location and/or facility.

iii. All requests shall be consistent with the Values, Mission, Goals, and Strategic Plans of the Incline Village General Improvement District.

iv. All requests shall be consistent with District design practices, fit within the existing context, and require no special maintenance or long-term replacement costs.

v. The District shall not be responsible for the repair or replacement of donated items and reserves the right to remove at a later date should it become necessary for District operations.

vi. All requests, if possible, should have geographic, topographic, historical, or individual significance, generally recognized and known throughout the area and where consideration involves geographical, topographical, or historical connotations, help should be solicited from historical societies, or other groups or entities having knowledge of the area.

vii. All existing and in situs markers, placards, monuments, acknowledgements and memorializations within the District are deemed to be approved and the District shall not be responsible for the repair or replacement of these items, and reserves the right to remove at a later date should it become necessary for District operations.

viii. While the District reserves the right to remove at a later date should it become necessary for District operations, all requests should be reviewed within the context of a long-term improvement on IVGID lands.

ix. All requests will be reviewed with any known family members, and their concurrence or objection shall be considered in the approval process. Only one request per individual will be considered for placement/installation.

x. Any requests in memorial of an individual will not be considered earlier than one year from their passing in an effort to respect the grieving period of the family members and community.

d. POLICY AND PROCEDURE FOR ROTARY BENCHES

i. The District has enjoyed a long and respectful relationship with the Rotary Club and has been able to work successfully with them to enhance our community through their bench program.

ii. The District intends to continue its relationship with the Rotary Club and document how the process works.

iii. Below are the steps for the process of requesting a bench through the Rotary Club:

1. Contact IVGID or the Rotary Club
2. Submit application and pay applicable fees to Rotary
3. Rotary coordinates with IVGID to determine site availability and need
4. Installation shall be coordinated with IVGID based on weather, site conditions, and available staff.

e. POLICY AND PROCEDURE FOR BRASS/BRASS-LIKE PLACARDS AT CRYSTAL RIDGE AT DIAMOND PEAK

i. The District has a long tradition of honoring skiers who have played a significant role at Diamond Peak Ski Resort and who have passed, by placing a small brass/brass-like placard on a rock located near Crystal Ridge.

ii. These placards have been placed at the request of the family and done at no cost to the requester.

iii. It is the desire to continue this practice.

iv. Below are the steps for the process of requesting a small brass/brass-like placard through the Diamond Peak Ski Resort General Manager:

1. Send an e-mail or contact the Diamond Peak General Manager with a detailed resume and justification at least thirty (30) days prior to the next scheduled Board of Trustee meeting, however sixty (60) days is preferable for full consideration.
2. Once the review is completed by the Diamond Peak General Manager and that placard is scheduled for a particular Board of Trustees meeting, Staff will place an advertisement, no smaller than one quarter of the page, in the display section of the local newspaper to make the public aware of this potential recognition.
3. The General Business item will be placed on the Board of Trustees agenda at the start of the meeting with a detailed agenda description. This item will be open to public comment by anyone desiring to comment on the item and that public comment will be governed by the public comment instructions on said agenda.
4. Placement of a placard must be adopted by the Board of Trustees in the form of a resolution.

f. POLICY AND PROCEDURE FOR PLACARDS OF HISTORICAL MERIT

i. A detailed resume and justification, including background, description of preferred placard as to the relevance and benefit to the District and/or local area, as well as which category of this policy and procedure that the request is made under, must be submitted, in writing, to the District General Manager or his designee at least thirty (30) days prior to the next scheduled Board of Trustees meeting however it is preferably that it is done sixty (60) days in advance. The Board of Trustees meets on the last Wednesday of each month unless their meeting is rescheduled by the Board of Trustees during a previous meeting.

ii. Once the review is completed by the General Manager and that placard is scheduled for a particular Board of Trustees meeting, Staff will place an advertisement, no smaller than one quarter of the page, in the display section of the local newspaper to make the public aware of this potential recognition.

iii. The General Business item will be placed on the Board of Trustees agenda at the start of the meeting with a detailed agenda description. This item will be open to public comment by anyone desiring to comment on the item and that public comment will be governed by the public comment instructions on said agenda.

iv. Placement of a placard of historical merit must be adopted by the Board of Trustees in the form of a resolution.

g. POLICY AND PROCEDURE FOR NAMING OF IVGID FACILITIES

i. Currently, Incline Village General Improvement District (IVGID) has two of its facilities, Anne Vorderbruggen Administration Building and Preston Field, named for community members who contributed significantly to the District.

ii. In order to have a facility named the following process will be followed:

1. A detailed resume and justification, including background, description of preferred name, and historical information as to the relevance and benefit to the District and/or local area, as well as which category of this policy and procedure that the request is made under, must be submitted, in writing, to the District General Manager or his designee at least thirty (30) days prior to the next scheduled Board of Trustees meeting however it is preferably that it is done sixty (60) days in advance. The Board of Trustees meets on the last Wednesday of each month unless their meeting is rescheduled by the Board of Trustees during a previous meeting.
2. Once the review is completed by the General Manager and that request for naming is scheduled for a particular Board of Trustees meeting, that meeting will be noticed as a public meeting, and two public meetings will be held to consider the dedication.
3. The decision to name an IVGID facility must be adopted by the Board of Trustees in the form of a resolution.

h. POLICY AND PROCEDURE FOR ALL OTHER FORMS OF COMMEMORATION AND/OR RECOGNITION

i. A description of the alternative form of commemoration and/or recognition shall be submitted and drawings or similar provided to convey a full understanding of the proposed concept.

ii. A detailed resume and justification, including background, description of preferred name, and historical information as to the relevance and benefit to the District and/or local area, as well as which category of this policy and procedure that the request is made under, must be submitted, in writing, to the District General Manager or his designee at least thirty (30) days prior to the next scheduled Board of Trustees meeting however it is preferably that it is done sixty (60) days in advance. The Board of Trustees meets on the last Wednesday of each month unless their meeting is rescheduled by the Board of Trustees during a previous meeting.

iii. Once the review is completed by the General Manager and the request is scheduled for a particular Board of Trustees meeting, that meeting will be

noticed as a public meeting, and two public meetings will be held to consider the dedication.

iv. The request must be adopted by the Board of Trustees in the form of a resolution.

Sources:

- **Policy Resolution No. 132** (Resolution No. 1701) Fundraising/Donation Activities at IVGD Facilities
- **Policy Resolution No. 136** (Resolution No. (not required) Policy concerning access to District Property and the Use of District Facilities for Expression
- **Policy Resolution No. 138** (Resolution No. 1849) Naming/Dedication of IVGID Facilities and Acknowledging Important Local Persons, Events or History
- **Click here to review in original form:** https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf

CHAPTER 5.03 PURCHASING & PECURMENT

Appendix: NRS Chapter 332 "Local Government Purchasing Act"

CHAPTER 5.04 PUBLIC WORKS PROJECTS

Appendix: NRS Chapter 338

MEMORANDUM

TO: Board of Trustees

FROM: Steven J. Pinkerton
General Manager

SUBJECT: General Manager's Status Report
Prepared for the meeting of February 27, 2019

DATE: February 19, 2019

Financial Transparency

The Monthly District Financials are posted on the Financial Transparency page https://www.yourtahoeplace.com/ivgid/financial-transparency.

Through the first seven months of the Fiscal Year, District-wide revenues are $2,215,746 ahead of projected budget and District-wide operating uses are $982,712 below projected budget. In total, we are $3.2 million to the good for year to date budget. For the month of January, we were $429,348 to the good due to a strong holiday season at Diamond Peak. While skier visits were slightly above average, skier revenue to date set a new record – $5,939,722.

We will be providing an update at the February 27, 2019 Board of Trustees Meeting regarding Diamond Peak's performance during the President's Day Holiday week.

The Capital Improvement Report for the first quarter of the Fiscal Year is now available on the Financial Transparency page.

Also a reminder that the Month and Year Ending June 30, 2018 (Pre-Audit) is now posted as well. As June 30 is the end of the Fiscal Year, these financials provide the final pre-audit numbers for the 2017-18 Fiscal Year.

Venue Status Reports

Venue Status reports are available on a monthly basis for key venues and operations. Reports are prepared for Public Works, Parks & Recreation, Finance/Accounting, Risk Management, Human Resources along with Ski and Golf when they are in season.

These reports are used to provide the Board of Trustees and the community with a summary of the activities for each venue, including significant expenditures

performed under the General Manager's authority. For example, while no new contracts were issued in November of December, the Public Works status report for October notes that two new construction contracts were issued that month valued at $24,783 and $53,400.

In addition, it provides real time updates of construction in progress. For example, the December Public Works Status Report provides detailed information on the one major project currently underway. It notes the Original Contract Amount, Change Orders to Date, Current Total Contract Amount, Total Payments for Work Completed to Date, and Current Balance to Completion (including retainage). It also includes updates on two Sewer Pump Replacement projects.

This report also includes monthly updates on Public Works benchmarks. For example, customer service requests in December numbered 61, slightly above the three-year average for November of 58. For the Fiscal Year-to-Date, customer service requests are two above the three-year average of 651.

There was only one Trash Complaint (actual call-outs) in December. This was well below the 23 the previous December. For the Fiscal Year-to-Date, complaints are 19 versus 297 the previous year.

Wastewater flow was at 28 million in December, just below the 29 million for the three-year average. For the Fiscal Year-to-Date, total flows are at 167 million, slightly below the three-year average of 174 million.

Additionally, the October report includes an update on activities related to Waste Not and the Tahoe Water Suppliers Association—for which the District provides management oversight. This section of the report provides a link to the 2016 IVGID Public Works Sustainability Report (https://www.yourtahoeplace.com/public-works/waste-not/waste-not-programs/sustainability). This report features a sustainability metrics evaluation system and documents Public Works program milestones.

The Finance/Accounting and Risk Management Status Report for December provides an update on the District's annual audit, the Sales Tax Refund by the State of Nevada and a number of other timely issues. It also outlined the District's latest Risk Management and Safety Initiatives.

The Venue Status reports are typically posted by the middle of each month and can be accessed on the District's "Resources" web page.

Bidding Opportunities

The District's "Resources" web page also includes a Bidding Opportunities link for businesses and the community.

Invitations to Bid, a quarterly update of projects awarded in excess of $25,000 in value since April 30, 2015 along with a link to pertinent Nevada Revised Statutes (NRS) code sections related to procurement and contracts are included in this section of the web page.

In addition, it includes a link to planetbids.com, which is where interested parties can search for District bid opportunities and review all bid documents. For recent bidding opportunities, it includes a list of prospective bidders and bid results.

Capital Projects Update

WRRF Aeration System Improvements
Jacobs Engineering is working on the final design. Final bid level documents are scheduled to be completed in the spring. The project proposes to replace aeration blowers and associated piping, valves and control systems. Engineering staff will bid the construction project in the spring with final project completion expected for later this year.

Incline Park Ballfields Renovations
This project proposes to replace the scoreboard and dugouts on all three ballfields, the infield on Field #3, and irrigation and drainage upgrades. The bid was opened in December. The project received one bid. District staff is reviewing the bid with the contractor and the donor. District staff will report back to the board once we reach a resolution.

Sewage Pumping Station #1 – (Overflow Parking lot)
Jacobs Engineering is working on the design for the replacement of the three variable frequency drives (VFD's) and replacement of the motor control center (MCC) that operate the sewage pumping units. Final bid level documents are expected in June. Bidding of this project is expected in summer 2019 with Construction anticipated for the fall/winter 2019-20.

Water Pump Station 2-1 Incline – (Burnt Cedar Beach)
Jacobs Engineering is working on the design for the replacement of the three water pump motor soft starts and replacement of the motor control center (MCC). Final construction documents are expected in late spring 2019. Bidding of this project is expected in summer 2019 with construction anticipated for the winter 2020.

Other Projects
The Recreation Center Deck/Stairwell will be bid in early February. The Water Reservoir Safety and Security Improvements will be bid in February/March 2019. The replacement of Burnt Cedar pool piping will be bid in March 2019 with construction in April 2019.

IVGID Quarterly
IVGID property owners should all be in receipt of the February edition of the IVGID Quarterly. This marks the first edition of the fifth year of the Quarterly. Along with the regular department summaries, it includes features on Fuels Management, the Fire District's ISO 1 rating and the SR28 Shared Use Path & Safety Storm Water Enhancements. It also includes nine pages that provide a comprehensive summary of IVGID's finances.

Washoe County Federal Lands Bill
On September 12, 2018 I sent you a letter from the Chair of the Washoe County Board of County Commissioners regarding the status of the Washoe County Economic Development and Conservation Act (also referred to as the Washoe County Federal Lands Bill).

The letter informed IVGID that they would not be able to include any of our parcels in their request for federal legislation.

In each case, the land was removed in part, due to opposition from the U.S. Forest Service. The County did indicate that the Forest Service would be willing to entertain proposals for potential lease of the parcels by IVGID, which has always been our understanding.

On October 5, 2018, Commissioner Berkbigler and Jamie Rodriguez, Washoe County Government Affairs Manager toured the Forest Service Parcel across from Incline High School. This is one of the parcels included in IVGID's December 2016 request for inclusion in the Washoe County Lands Bill.

Commissioner Berkbigler and Ms. Rodriguez were educated about the benefits that could accrue to both the Forest Service and IVGID from a potential transfer of this property.

Ms. Rodriguez volunteered to facilitate a meeting between IVGID and the Forest Service to discuss the potential benefits in more detail. The Forest Service has not yet provided a time for a potential meeting.

Director of Golf

As noted in the last update, Michael McCloskey's last day with the District was November 17, 2018. Championship Golf Pro Kyle Thornburgh is serving in the interim role until a permanent replacement is hired.

Staff worked with the Professional Golfers Association (PGA) and Borders Golf Group to develop an updated job description. Borders is taking the lead role in the recruitment, with interviews held on February 11. The goal is to have the position filled shortly and the new Director on site by April 1, 2019.

Mountain Golf Course Clubhouse Fire

At the December 12, 2018 Board of Trustees Meeting, the Board of Trustees reviewed and approved a conceptual design for the Mountain Golf Course Clubhouse Fire Damage Repair and Renovation.

As noted that evening, staff was hoping to execute multiple tasks simultaneously. Otherwise, there would be little chance of reopening the Clubhouse meal service facilities for the upcoming season.

To meet this deadline, staff was expediting the design and bid process concurrent with ascertaining the available insurance proceeds. The best case scenario was hoping to put the project out to bid by early January.

At the time of this report, staff continues to work on parallel paths, working with the architect to complete construction plans that are ready for submittal to Washoe County and working with the insurance company to come up with a final number for available proceeds for repair.

We have made progress over the past month with each path, but it is unlikely that any improvements can be made to the Clubhouse before the beginning of the season. We are working on interim solutions for using the Clubhouse this summer, and will provide you with more information at the Board of Trustees meeting.

FEMA Reimbursements

As I noted verbally at the February 6, 2019 Board of Trustees Meeting, we have three reimbursements pending with the Federal Emergency Management Agency (FEMA) for repair projects that met their eligibility requirements. Eligible projects with reimbursement amounts are as follows:

Utility Wetlands: $12,881
Diamond Peak Maintenance Building: $38,643
Diamond Peak Culvert Repair: $331,019

MINUTES

REGULAR MEETING OF FEBRUARY 6, 2019
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 Chairwoman Kendra Wong on Wednesday, February 6, 2019 at 6:00 p.m. at the Chateau located at 955 Fairway Boulevard, Incline Village, Nevada.

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 Peter Morris, Matthew Dent, Tim Callicrate (on the telephone), Phil Horan, and Kendra Wong.

Also present were District Staff Members Director of Finance Gerry Eick, Director of Parks and Recreation Indra Winquest, Director of Public Works Joe Pomroy, Director of Human Resources Dee Carey, Diamond Peak Ski Resort General Manager Mike Bandelin, Principal Engineer Charley Miller, and Communications Coordinator Misty Moga.

Members of the public present were Jacquie Chandler, Michael Brothers, Wayne Ford, Pete Todoroff, Gene Brockman, Sara Schmitz, Steve Price, Linda Newman, Kevin Lyons, Aaron Katz, Mike Abel, Judith Miller, Jack Dalton, Steve Dolan, Denise Cash, and others.

(44 individuals in attendance at the start of the meeting which includes Trustees, Staff, and members of the public.)

C. PUBLIC COMMENTS*

Judith Miller said she has a couple of things; it was quite an extensive Board packet to get through but she did hit the part with the most recent Open Meeting Law (OML) violation. It was kind of interesting how the agenda was formed this time because when there is no violation it is in bold 50 point print but when there is a violation, it is in the tiniest print and it doesn't in fact say there was a violation rather it just says we had to post this because the AG said so; this is one of the things she took note of. Another thing was some of the correspondence between District General Counsel and Ms. Bateman was rather inappropriate. He talked about a

group that had this political agenda. If asking for public records and having them denied - is that a political agenda. Having agendas that aren't clear and complete is that considered some form of political agenda. If we have budgets that are not meaningful and don't us if our venues are scheduled to take a great deal of supplements or if they are not standing on their own – is that a political agenda. If we have rates that are not equitable because they give tremendous benefits to certain recreation venues where the ordinary citizen pays a much higher rate if he uses a certain amount of water. If we have minutes that are unintelligible and bias - is that a political agenda. Anyway, she is bringing that up today as she thinks the Board should have received her e-mail regarding this month's minutes from the January 23rd meeting and noted that this has happened over and over and over. The comments are misconstrued and she cannot help but believe that it is an intentional thing when it happens with this frequency. She knows that the Board Clerk is capable of making these minutes very concise and accurate but it seems that certain individuals' comments are totally convoluted and it makes it look like we haven't said anything substantial.

Aaron Katz said this agenda is so long it pleads for a policy on public comments, as there is not enough time. Consent Calendar Item F.1.b. – hearing, he sent an e-mail to all of the Board and asked to get it off of Consent Calendar as Staff hasn't qualified for a justification. Staff doesn't tell you the AWWA standards that were incorporated because Staff hasn't incorporated what AWWA said. Mr. Katz continued that he offered to do a hearing if the Board will give him the same amount of time because the rates are not fair, are unjust, and preferential and if you don't know what AWWA says, you have no business establishing rates. General Business Item G.4.; by the way, your crack Staff and Counsel, in labelling this, didn't comply with the OML again so yes, he will be filing another complaint. Why is he [District General Counsel] recommending filing a lawsuit; Staff says it is only academic, didn't get hit with any penalties, so why would the Board want do a worthless lawsuit. There is no legal standing to do a lawsuit and if this gets thrown out of court, the District should look in to malpractice. One hundred and forty four thousand dollars for District General Counsel - why not hire a full time attorney for that money. He says the community is hostile and disgruntled, well, he is not here to take sides rather he is here to practice law.

Mike Abel read from a prepared statement which was submitted.

Sara Schmitz said some of what she is going to talk about, Mr. Abel covered. Ms. Schmitz read from a prepared statement which was submitted.

Linda Newman read from a prepared statement which was submitted.

Daniel Stewart said that it was good to be a law partner of District General Counsel and that about a year ago his firm merged and it has been a very good marriage as he has enjoyed working with District General Counsel. Background about him is that this District is not just getting District General Counsel but everyone at the firm to help whenever they can. His family was kicked out of Utah, landed in Nevada, his father attended kindergarten here, family members are in Northern Nevada, and he can't imagine living anywhere else but Nevada. He has spent the last five to six years working in and out of public agencies and mostly recently working with Governor Sandoval. He has also worked with private clients such as the City of Mesquite, Valley Electric Association – Nye County rural co-op – advised elected board, City of Henderson, North Las Vegas, as well as others. We are the fifth biggest firm in the state and we are very excited about working with Incline Village, as this is interesting and important work upon which we can make a difference and serve you well.

Pete Todoroff said a couple of things – one of the things he noticed is the easement for NVEnergy and while he doesn't have a television he does have a computer that gets him the news. Some casinos in Reno have decided to get their energy from a firm in Texas because NVEnergy has been remiss about getting power to this community with the last outage being for eight hours. He had to take a nap on his sofa with his parka because it was so cold. There has been one hundred and sixty hours in the last three years that NVEnergy hasn't provided power to this community. Sheriff Ballam is going to be attending a dinner meeting at Crosby's, and since we need a place for a Sheriff's boat, he is going and if anyone else would like to come to the meeting, you need to contact Mr. Clark and pay $25. It is a worthwhile meeting to attend and he will be there.

John Steffen said they appreciate the opportunity to come and speak and expressed his appreciation for the recommendation. Mr. Steffen said, as a little history of the firm, that he is a co-founder and that the firm was founded in 1996 with Mark Hutchison. Both of them were with a different firm in town, decided to start a firm so they took out personal loans as they wanted to start a firm that provided highest legal expertise at reasonable rates and this is still what they believe in today. As time passed, they kept adding to the team and today the firm is at forty five attorneys. They have members in high ranking positions such as the Supreme Court. Many of their team members help the poor and the needy which is one of the best achievements. The firm focuses a lot of time in doing pro bono work for people who can't afford it and the firm handles every aspect except criminal. It is a pleasure to be before the Board tonight and he is happy to answer any questions.

Andy Wolf said he is the President of DPSEF, a Masters member of the ski team, and he has a son on the team. He has the privilege of being on the DPSEF Board and is currently leading that Board. He wanted to take the time to thank Staff and the DPSR Staff for all their efforts. We had U14 qualifier race in January which involved U14 athletes and all feedback was really excellent from both parents and coaches; we had great representation from all aspects. There was incremental income to the District in food and beverage. The following weekend, we had Ullr Fest. There was a great turnout from the community with a few hundred people in the bar listening to the band and then more at the bonfire. Thank everyone top to bottom for doing these events. His Board is all volunteer and in every interaction he has with IVGID employees there is this great culture of customer service. This culture is evident when he is doing a drop off at the dump or stopping by hazardous waste. It emulates from the lowest level to the highest level and he is always met with professionalism and care and if one wants to talk, they will chat. If one would rather get their business done quickly, they do that as well. This is a great reflection on the District; thank you.

Kevin Lyons said he is President of GSGI and that there are a couple of things he found interesting on an agenda item and that was that there was no acknowledgement of a conclusion so this is not a valid agenda. The District is supposed to that at its next meeting and he thinks that the findings were delayed while District General Counsel's buddy was the Attorney General. The GSGI settlement agreement has been violated by Chairwoman Wong and he notified the Board but he hasn't heard anything. He also notified District General Counsel of this violation as well as concealment of public records which is a crime. He does a lot of training for elected officials and Staff and what he has here is handcuffs and he asked if he had the Board's attention; Mr. Lyons then read aloud from Nevada Revised Statutes Chapter 195 entitled Parties to Crimes which he distributed prior to the start of his public comments. It is his understanding that there is civil action pending, one criminal complaint, and several bar complaints.

Steve Dolan said he wasn't planning on saying anything but for two and a half years he has e-mailed and cautioned about lawsuits that are occurring under District General Counsel's tenure and that they have happened/occurred and this was just based on what he thought would happen. The frivolous lawsuit with Mr. Lyons happened and it was a bad outcome for Incline Village. There has been wrong advice given to you regarding public comment and his attempts to speak where you were advised that you couldn't allow him to speak which was reversed at the next meeting. Obviously, this is bad advice that has been going on with

District General Counsel personally and it is prevalent and ongoing so please do not renew his contract.

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

Chairwoman Wong asked for changes to the agenda; Chairwoman Wong noted that she is removing Report Item E.1. and General Business Item G.1. as the presenters are not here tonight.

Trustee Callicrate said, regarding the Consent Calendar, that he would like to move the public hearing on utility rates to General Business Item G.1. and that he is concerned about the hiring of the recommended law firm, he would like to look at a couple of firms that were interested, and that what we have before us is stuff that was skipped over. He is a little leery of this item going forward tonight. Chairwoman Wong said that the Board can have that discussion during General Business Item G.3. and if we are not ready, we can table it and bring it back at another time. Trustee Callicrate said that is a good step.

Chairwoman Wong said so we are moving Consent Calendar Items F.1.a. and F.1.b. to General Business Item G.1.

Trustee Dent asked that General Business Item G.4. be moved up in front of General Business Item G.3.

Hearing no further changes, Chairwoman Wong approved the agenda as revised.

E. REPORTS TO THE BOARD OF TRUSTEES*

E.1. Verbal presentation by representative(s) from Tahoe Prosperity Center - REMOVED FROM THIS AGENDA IN ITS ENTIRETY

E.2. Verbal presentation by representative(s) from North Lake Tahoe Fire Protection District (NLTFPD)

NLTFPD Chief Ryan Sommers gave a presentation on ISO Class 1 community which is incorporated herewith by reference.

Chairwoman Wong congratulated the NLTFPD team as this is a huge recognition and asked if community members needs to reach out to their insurance companies. NLTFPD Chief Sommers said if their companies subscribe to ISO he would recommend that homeowners follow up with their respective agents.

Trustee Morris said compliments to you and your team and as someone who has been through the ISO process, congratulations to you and your team for all your hard work.

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

1. Review, discuss, and possibly set the dates for the public hearings on the following matters:

   a. Review, discuss, and possibly set Date and Time for Public Hearing for the 2019/2020 Budget and Recreation Roll for Wednesday, May 22, 2019, 6:00 p.m.

   b. Review, discuss and possibly set the date/time for April 10, 2019 at 6:00 p.m. for the public hearing on the proposed amendments to Sewer Ordinance #2 "An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District" and Water Ordinance #4 "An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District" that Includes the Utility Rate Increase

CONSENT CALENDAR ITEMS F.1.a. AND F.1. b WERE BOTH MOVED TO GENERAL BUSINESS ITEM G.0.

2. Review, discuss, and possibly approve a Grant of Easement to NV Energy on District Property APN: 128-352-01 (687 Wilson Way) for the Purposes of Constructing, Operating, Adding to, Modifying, Removing, Accessing and Maintaining Above and Below Ground Communication Facilities and Electric Line Systems (Requesting Staff Member: Director of Public Works Joe Pomroy)

Trustee Horan made a motion to approve the Consent Calendar. Trustee Morris seconded the motion. Chairwoman Wong asked if there were any comments, receiving none, she called the question and the motion was passed unanimously.

Chairwoman Wong called for a quick break at 6:47 p.m.; the Board reconvened at 6:56 p.m.

G. GENERAL BUSINESS (*for possible action)*

1. Review, discuss, and possibly set the dates for the public hearings on the following matters:

   a. Review, discuss, and possibly set Date and Time for Public Hearing for the 2019/2020 Budget and Recreation Roll for Wednesday, May 22, 2019, 6:00 p.m.**(was Consent Calendar Item F.1.a)**

   b. Review, discuss and possibly set the date/time for April 10, 2019 at 6:00 p.m. for the public hearing on the proposed amendments to Sewer Ordinance #2 "An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District" and Water Ordinance #4 "An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District" that Includes the Utility Rate Increase **.(was Consent Calendar Item F.1.b)**

District General Manager Pinkerton said that these two items are wholly separate issues and that G.1.a. is about setting the date of the consistent with the Department of Taxation guidelines. These are two separate issues that will require two separate motions.

Director of Finance Eick gave a brief review of the submitted memorandum. Chairwoman Wong asked Trustee Callicrate what his issues were as he is the one who made this request. Trustee Callicrate said he didn't have an issue with G.1.a. as that date is fine; he just wanted to move G.1.b. as he has no issue with G.1.a.

Trustee Dent asked if we needed a motion for part a.; Chairwoman Wong said yes, that is correct.

Trustee Horan made a motion to set the date of a public hearing for the 2019/2020 Budget **and** Recreation Roll for Wednesday, May 22, 2019 under the Nevada Revised Statues. The time of the meeting is expected be 6:00 p.m. Trustee Callicrate seconded the motion. Chairwoman Wong asked for comments, receiving none, Chairwoman Wong called the question and the motion was passed unanimously.

Trustee Callicrate said on G.1.b., and this was brought up before, are the balances in compliance with Policies/Practices 19.1.0 and 19.2.0 and that Policy 7.1.0 actually is for Community Services and Parks and Recreation and not Utilities. His concern is we have two conflicting documents - Board Policy 19.1.0 and Board Practice 19.2.0 and that if we do that then we don't have enough money in our accumulated resources. He would like some explanation as this is dangerous territory for accumulated resources. After that he would like to go to Practice 19.2.0 and look at the three paragraphs on agenda packet page 10 which don't adequately describe and define.

Director of Finance Gerry Eick said that he would like to remind everyone that we have two policies – one is fund balance and the other is about working capital which are two very different things. Historically, the utility rate study uses the term "reserve" meaning fund balance. We have twenty five percent of the year's expenditures for the Utility Fund, other than depreciation, which is where the $1.9 million dollars comes from. In the District's Audit Report, fund balance is net position. Staff does acknowledge that there are potentially three different terms that is the same number – reserve, fund balance, or net position. The policy is very clear on having $1.88 million dollars and the District has over $10 million dollars according to the last audit. For working capital, as it is defined by accounting principles, the policy about that provides for three elements which are at the top of the page 11. The amounts should be $3.9 million dollars to $4.8 million dollars and the District has $6.1 million dollars as stated on page 11. Staff does recognize that the terminology could be confusing however the District is well in excess of both policies.

Trustee Callicrate said it is his recollection that 19.1.0 and 19.2.0 were kind of standalones for the Utility Fund up until 2015. Policy 7.1.0 seemed to muddy the water and he does appreciate the explanation. We have to be consistent with what we are discussing and he apologizes for not being at the last meeting. The calculation that Trustee Dent asked for, he doesn't know if that was provided. He would like to hear from Trustee Dent as to what his concerns were, were they answered, or is the calculation forthcoming.

Trustee Dent said he would like a little clarification; agenda packet page 10, third paragraph, reserve balance is net position. Director of Finance Eick said yes. Trustee Dent said for the fourth paragraph, there is no definition so does that mean net position as well. Director of Finance Eick said that

reserve is an old, old term and that the new term is net position. Trustee Dent said on page 11 it shows $6.129 million dollars for the working capital which is part 1; where is part 2. Director of Finance Eick asked what part 2 was. Trustee Dent said 19.2, the practice. Director of Finance Eick said that is 19.2 as 19.1 says to have working capital computation and 19.2 sets those perimeters. Trustee Dent says it shows $1.284 million dollars so where is the accumulated multi-year capital money. Director of Finance Eick said it is in the current assets as well as there is $4 million dollars in non-current assets. Trustee Dent said so does the current assets include the $1.692 million dollars. Director of Finance Eick said a portion of it is. Trustee Dent said that his calculations produce a negative $4.697 million dollars in the Utility Fund. Director of Finance Eick said he can't agree with the math because of the definition which doesn't speak to it. It is why we have the policy or practice as it does acknowledge accumulation of resources but doesn't eliminate. We can change the definitions but right now it isn't matching rather it is apples to oranges. Trustee Dent said we have a $9.7 million dollar commitment that we are using to pay as we go for operating expenses so we don't have the money because Staff is using it for other things. Chairwoman Wong said let's back up – number 1, this was setting a threshold of working capital, etc. at a point in time. The current assets and current liabilities are also at a point in time. Operations are continuous so it doesn't pick up revenues and expenditures. These measurements are because we want to make sure the financial position in the Utility Fund is to be solvent and is based on our projections so we have it. This is not to say we have $4 million dollars in cash today because it is not meant to be that rather the measurement we are using to say we have a solvent Utility Fund.

Trustee Callicrate said we have a set aside of $2 million dollars that we are collecting for the effluent pipeline. Those reserves are accumulating and have been designated and we have that collection which has not been fluctuating but we have been borrowing from that with the relief values that we had to replace as those could have created a catastrophe for the pipeline. We have an unlined pond that is being worked on and it has to be addressed. We seem to always be operating in emergency mode and we have to be careful on how we are utilizing this money. The budgeted money versus the estimates are grossly out of line as we are looking at a couple of million dollars more which means we are going deeper underwater. His concern is with the terminology and the two policies as well as calling the project by two names so he would like to take a step back and really access what we need such as raising rates by 10 or 12 percent. He also has concerns with the

money being collected and how it has been set aside. We need to have a discussion, because of what has happened over the years, about our controls and mechanisms. It is confusing to him as well as a couple of dozen people in the community. He is still having an issue with capital accumulation of money, carryover, what to do right away, and the replacement of the pipeline on which we are dangerously shy of what we should have. He would like to have a good collegiate discussion in the near to mid distance and that is why he is asking questions. Chairwoman Wong said it could be valuable to go back and look at the presentation from the last meeting. Trustee Callicrate said he did go through that and he is not faulting anyone but with the interchanging of the terminology, we need to come to some agreement about we are calling it. Effluent goes strictly to that unless we make an amendment. We have lurched from one emergency to another and things can get lost and change the whole mindset. The District is being very proactive but we need to be better on how we are moving forward as it is very confusing and there are areas where the community thinks we have the money and are moving forward but we don't have enough reserves to take care of this and that is how he feels and that is where he is coming from. This is not a got you rather he is trying to understand a shifting target of the effluent pipeline and the effluent project. We need to be better in our definition and all call it the same things.

Chairwoman Wong said she would like to get back on track because the agenda item is about the hearing and this Board will have several more opportunities to discuss this matter. District General Manager Pinkerton added that the Board will get another bite at the apple in March and then talk more about it in April at the hearing and that Staff has been clear about moving forward on this project. On the long range calendar, we have been announcing that we see some money coming in from the U.S. Army Corp of Engineers so there are a lot of unknowns but that we have a good idea about the upper end of this project. If you want to decide to have one hundred percent of the money set aside, then Staff can do a series of forty percent rate increases. Staff has been prudent in what we charge as we go forward in our due diligence and Staff mentioned they will have a better idea in the fall. Staff has tried to be very cautious and prudent and coming back with a philosophy about costs. In having all the money, our sewer rates would be fifty to one hundred percent higher. Is it more responsible to have enough money and be responsible to the plan we have; this year it will be much clearer and remember this is not a onetime project. Even if the District was told to start this project tomorrow, there would be a three year ramp up. We are doing our due diligence to minimize costs of the project and minimize

the cost to the ratepayers. We are meeting all the required accounting standards while being prudent.

Trustee Callicrate said he is not trying to create an issue but on the terminology, we have three different terms for the same thing. We have collected money from our taxpayers in our community and that is $2 million dollars each year and we have had to use some of that money for other emergencies. We don't know what the final cost is, $23 million dollars right now, but it keeps going up and up and if we don't know the cost then it isn't prudent to do a rate study on something that we don't know what it is going to cost. It doesn't jive as well as it could. He has expressed his concerns and if we set a time specific public hearing for April 10 and the four percent has raised a lot of eyebrows. He has answered to the people who elected him who have asked him what we are trying to pull and that resulted in unfair comments towards him so he is trying to ask specific questions because that is very important. People know that they are being charged fifty dollars per month which is a lot of money that is being collect and they want to know where it is going. The District has had some grossly out of line estimates by our engineers and we have continually raised our rates by four percent every year so it is time to start looking at our District and what the true costs are and have a far more accurate picture for the community because it exceeds our estimates. There are a lot of people who have been paid a lot of money and do a tremendous job so please know that he is raising this issue in an effort to try and find out the fact.

Trustee Morris said he feels like one moment Trustee Callicrate says that Staff does a tremendous job and then something else the next moment. Trustee Callicrate said he didn't mean to imply that. Trustee Morris said he accepts what you are saying but understand that it is hard to deal with. Trustee Morris than thanked the team for doing a tremendous job and that he doesn't honestly know what other analysis they would do to come up with some other recommendation towards what Trustee Callicrate is thinking. He would urge Trustee Callicrate to check with District General Manager Pinkerton and have everyone understand that the Board will have an opportunity to still review this and that this is not our final say as it can still be addressed. District General Manager Pinkerton said that is correct and that the Board has the ultimate authority to choose the rate. Trustee Morris said he does agree about terminology and that he thinks he has evolved to be inclusive of what we do; effluent export pipeline is a good term to use. The Board should agree on what term to use so we can always be on the same page. He wondered if Trustee Callicrate would work with the team to

come back and tell us what the numbers should be and come back to the Board and say the numbers are X and the increase to utility rate should be Y. Trustee Morris continued that he has spent the time to go through the numbers and he is really happy with the result. Trustee Callicrate said he would be amenable to doing something like that as he is trying to achieve success. Further, his blunt speaking isn't meant as personal as he is looking at the dollars and cents and his frustration is with not having enough money to do all we want to do. He will work with the District General Manager upon his return and there needs to be another discussion, maybe that can occur at the March meeting, as he doesn't want to get against the wire and have a vote' he doesn't want that pressure because it creates tension where it doesn't need to be. He appreciates Trustee Morris' comments and to the District General Manager, he is sorry to bark at him but let's bring this back in March and set the hearing date at that time; he doesn't want to be pushed against the wall.

Chairwoman Wong asked District General Manager Pinkerton to agendize another discussion for the next meeting and for Trustee Callicrate to meet with our Staff. District General Manager Pinkerton said we need to go to March meeting. Chairwoman Wong said she is okay with March and asked Trustee Callicrate to meet with Staff and come up with a format. Director of Finance Eick added that it would be March 18 to talk about this. Chairwoman Wong asked this to be put on the agenda for March 13. Trustee Callicrate said so this item is not about establishing the date rather just the hearing date and noted that it is critically important to get this figured out and asked that Staff reach out to him and do so well in advance of the April meeting. Chairwoman Wong confirmed that this action is just to set the hearing date and is not deciding the rates or anything else. Trustee Callicrate said okay.

Trustee Dent said he had no more questions but that he would like to see a calculation that is in compliance with 19.1.0 and 19.2.0 and that he asked for it at the last meeting, he doesn't have it and the District doesn't have adequate reserves.

Trustee Morris said he apologizes in advance for his confusion but that he thought Staff went through that and that is what is on agenda packet page 11 so is there some other calculation. Director of Finance Eick said that the calculation that appears in the packet is for Practice 19.2.0 and that practice is the one that supports Policy 19.1.0. For the fund balance, or 7.1.0, that is exactly the calculation that is there. Trustee Dent said it is 19.2.0 and the compliance that he wants to see; Director of Finance Eick said that is it.

Chairwoman Wong asked that Trustee Dent sit down with Director of Finance Eick and have him walk you through the information. Trustee Dent said that is fine but that the District still has a $5 million dollar shortfall.

Chairwoman Wong asked for any other questions or comments about the hearing date; hearing none, she asked for a motion.

Trustee Morris made a motion to set the date/time of April 10, 2019 at 6:00 p.m. for a public hearing for the proposed amendments to IVGID Sewer Ordinance No. 2, entitled "An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District" and IVGID Water Ordinance No. 4, entitled "An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District". Trustee Horan seconded the motion.

Chairwoman Wong asked for any further comments.

Trustee Dent said he will be voting no on this motion because we are not following 19.1.0 and 19.2 and that 7.1.0 was slipped in here but it doesn't apply because this is an enterprise fund.

Hearing no further comments, Chairwoman Wong called the question – Trustee Dent and Callicrate voted opposed and Trustee Horan, Morris, and Wong voted in favor – the motion passed.

G.1. Review, discuss, and possibly provide input and guidance on legislative matters for the 2019 State of Nevada Legislative Session following a verbal presentation on legislative matter provided by Tri-Strategies representative(s) – **REMOVED FROM THIS AGENDA IN ITS ENTIRETY**

G.2. Review, discuss, comment and possibly adopt a Popular Report format under 2018 Board Work Plan (Requesting Staff Member: Director of Finance Gerry Eick)

Director of Finance Eick gave a brief overview of the submitted report.

Trustee Morris said thank you and that he continues to like all that Staff is trying to do. He would draw attention to the bar charts as he worries a little

that in trying to get everything together, we now have got too much. It is a little tough to see this and he understands what it is trying to accomplish but perhaps it would be better to split into two.

Director of Finance Eick said that Staff did a lot of work on this and that he wanted to present the work as a next step from what we had in December, the intent was not to be busy, and that he acknowledges it is better to split this. Agenda packet page 17, the items that are shaded in blue, are a subset to the numbers on the left so those could naturally be turned into two pages. Trustee Morris said that he appreciates that and the goal and intent; he is a voice of one who appreciates that.

Trustee Dent asked if this was just for the Quarterly. Director of Finance Eick said it is just a sample of what we have done. This is not in accordance with any standards and is our own format that is based on audit report and that Staff is not creating a different set of records. We talked about this in December, Staff hadn't shown you the prior year but it is important to get the detail behind it.

Trustee Callicrate said thanks and to Trustee Morris' point, there is a lot of information and it is a bit alarming so splitting the page makes better sense. It is a lot to absorb and is a great opportunity to move forward. Thank you and the team for the hard work. He is not a numbers person but he does tend to like what Staff has done while he knows there is more tweaking to be done. Understands that this is IVGID formatting that does make some things much clearer.

Chairwoman Wong said that she really likes where this has come along to and one suggestion she has is on agenda packet page 17 and that is to flip that entire chart so when one is reading it, it follows agendas packet pages 19 and 21. On the graphics. Staff did an amazing job with consistency so kudos to them. Director of Finance Eick said Staff did have the benefit of having a graphics person and our Staff working on it versus an accounting person. Trustee Morris said it makes sense to put in some commentary such that this is a representation rather than a statement of accounts. Director of Finance Eick said sure and that on the first solid blue page, Staff tried to point readers back to that information that comes straight out of the Audit Report.

Hearing no further discuss, Chairwoman Wong asked for a motion to adopt the presented popular report format.

Trustee Horan made a motion to adopt the presented popular report format. Trustee Dent seconded the motion. Chairwoman Wong asked for any further comments, hearing none, called the question and the motion was unanimously passed.

G.3. Review, discuss, and possibly request a Petition for Judicial Review of Office of Attorney General File No. 13897-257 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Frank Wright (Requesting Staff Member: General Manager Steve Pinkerton and District General Counsel Jason Guinasso) – **MOVED TO GENERAL BUSINESS ITEM G.3. FROM G.4.**

District General Manager Pinkerton gave a brief overview of the submitted memorandum.

Trustee Callicrate said he has a concern with item and that he wants to just do what is required of us about what they told us and to do anything else, he would have a concern with that. The Board didn't initiate this and it should have been done that way because the Board didn't do this in a public meeting and the Office of the Attorney General did give us a violation of the Open Meeting Law and they made that crystal clear so let's rectify and move forward. This is nothing personal on any one person rather he is just trying to get clarity.

District General Manager Pinkerton said that this is identical to Item J.1. and that Staff just added an additional item and put that onto the agenda for Board discussion.

Trustee Horan said as he recalls the only instruction was to have it be included on the agenda and there was no corrective action to take and then have the second item as well. There was no Open Meeting Law violation rather we are following the instructions and including it on the agenda.

Chairwoman Wong said it is her point of view to accept this and move on and don't spend any more time or money on this as the Board already took action in initiating legal proceedings.

Trustee Callicrate said he agrees and he doesn't want to spend any more money. One concern he has is on agenda packet page 404 and that was a Dropbox situation that when you click on that there is a series of snippets of

Mr. Wright that are not there in their entirety which was really startling to him. What are we doing in putting together a video that like it or not some comments were offensive and some were benign but that he doesn't think this is something that the District should be involved in as a District as it is not right. People say things and we have to be big boys and girls as we signed up for the job and if it gets too much, resign or don't run for the Board. He was really offended by this video and would like to know who authorized it, who assembled it, and what was the cost.

Trustee Morris said that this was part of a submission that was an exhibit and it was something that was done in December of 2017 and that there was an opportunity to review this so he is surprised that Trustee Callicrate is asking about this now.

Trustee Callicrate said that is a valid question and that he doesn't remember that Dropbox link, doesn't remember seeing it, and if he didn't catch it in December of 2017, he apologizes for that. The bigger question is why was it included; it was a part of the forms that were submitted and it was an inappropriate submission because it is going after a person in the community and it is not an appropriate use of District time. He does appreciate Trustee Morris bringing that to his attention as he overlooked it.

Chairwoman Wong said anytime anyone gives public comment, it is just that and it is Livestreamed over the Internet as well as audio recorded. One has to use one owns personal judgment because it is public.

Trustee Callicrate said when put together as a whole and he has been the recipient of Mr. Wright's comments, the way it was put together and the tone it sets, there were important aspects that were left off. Everything is public as we show the public comment so show it all and don't show bits and pieces. There may be some valid points but that he doesn't think that the District should be creating its own reality.

District General Counsel Jason Guinasso said this was done in response to Open Meeting Law complaints as part of their retainer agreement so there was no additional charge for this compilation. On agenda packet 374, it was referenced under an argument and then used in response to several Open Meeting Law complaints. Of the twenty six Open Meeting Law complaints, he believes that Mr. Wright accounts for roughly fourteen of them. We argued that he brought this in bad faith, has a history of doing so, and included a log of complaints. District General Counsel Guinasso then read

from that document regarding the video excerpts and stated that the reason why the video was included was to establish bad faith which is a legitimate argument to make and noted that it has been included in several responses over the last year or more.

Chairwoman Wong asked if we needed to do anything with this. Trustee Horan said no and that the finding relative to the complaint is not correct but that is within the Attorney General's purview to do that but that this is a moot point at this stage and we need to move on.

Trustee Morris said he agrees it is a moot point at this stage and that there is now a record at this meeting that we know that the facts that the Attorney General has created are not accurate and while they are wrong, we don't need to move forward.

Trustee Dent said he didn't think we should be besmirching community members and that he would like to take a different approach which is to respect the people of this community and not put videos together nor wasting the time to do it. Taking a different approach would be better in the future and not wasting any more money as we entered into litigation without the Board's approach. He asked where in Policy 3.1.0 this was and he was given Resolution 1480 and the retainer agreement and it is not there. The Board spent $50,000 plus $10,000 to a non-profit, per GSGI direction, and we shouldn't have done any of this because it needed Board approval. Enough time and money has been spent on this and he doesn't want to spend $5,000 on this. Trustee Dent then asked if the three Trustees to the left of him could even vote and if this was a violation of ethics; that is a question for District Counsel. District General Counsel Guinasso said there is no ethical violation for wanting to disagree with the Attorney General. Chairwoman Wong added that this is a moot point as the Board revised its policy and that this issue is done and resolved. Hearing no further comment, Chairwoman Wong closed this item.

Chairwoman Wong called for a break at 8:12 p.m.; the Board reconvened at 8:22 p.m.

G.4. Review, discuss, and possible approve a three year agreement with Hutchison & Steffen for District General Counsel services at a cost of $12,000 per month or $144,000 per year (Requesting Trustee: Vice Chairman Phil Horan and Requesting Staff Member: General

Manager Steve Pinkerton) – **MOVEDTO GENERAL BUSINESS G.4. FROM G.3.**

Vice Chairman Horan gave an overview of submitted memorandum.

Trustee Callicrate said going back to the August 27 meeting, we discussed the process and we were assured that this was fact finding and that we would be engaged and allowed to have plenty of input and now here we are given a this is who we recommend. It was brought up in December and the reply was we are reaching out to firms who responded. Moving forward with a $2,000 raise is a huge leap in the process. He was under the impression that the Board was going to be given documents to review and now we are at here is what the committee recommends. He would like to put this off as he was expecting to be more involved. He does have concerns about this last Open Meeting Law response and admonishments from others. This is about the professional work that the District has paid dearly for. This District has had a number of violations and things have been rectified but now we are looking at $144,000 per year for three years, when in the past, we went from roughly from $4,000 per month to $10,000 per month, so we are now coming close to $200,000. and now we have a guarantee of $144,000. He can't move forward with this and he wishes the whole Board would have been involved with the process as this is a huge leap and he doesn't appreciate it so he is not prone to renewing this contract.

Trustee Horan said that his interpretation that there was going to be a filter and that the next is why we are where we are tonight. You have the information we had from both firms and he thought that was the data to be brought back to the Board. You had the information we had when we reviewed this. This was not intended to take it out of the hands of the Board but rather it needed the filter to screen them. We had five, there was three we wanted to talk to, and we ended up with two very fine firms and you have the data as far as that information is concerned. Just because we made a recommendation doesn't mean it is a done deal and he takes a little exception on the being a big surprise but you have the details.

Trustee Callicrate said he understands Trustee Horan's perception; who was on the committee and was it Senior Staff and you. District General Manager Pinkerton said it was Vice Chairman Horan, himself, District Clerk, Director of Parks and Recreation and the Director of Human Resources.

Chairman Wong said that she was surprised with the rate as we can't get that with an individual and that she was expecting it to be more around $240,000 a year given everything that we have to deal with so she is supportive of this recommendation.

Trustee Dent asked who determined the duties and responsibilities of counsel as that was one of his concerns and that Staff not make any decision so when will the Board decide what the responsibilities will be. District General Manager Pinkerton said the responsibilities didn't vary from the responsibilities of what they currently are and that there were no changes in scope of the duties of legal counsel at this time.

Trustee Callicrate said in a community of a couple of hundred thousand people perhaps $240,000 would be justifiable and in looking at the types of concerns and complaints from the community with the generation of the bulk being Open Meeting Law complaints and record requests perhaps, to Trustee Dent's point, what are we doing that we can do better or to bring down the vitriol from one or two things and that he knows this is pie in the ski and that this discussion should have occurred before retaining counsel. Up until RKG was hired, counsel worked for the Board and that has been changed in the last contract revision and it looks like we are basically seeding all our control over to the General Manager which is not the intent of our Board policies and procedures. Can we wait until those are changed? Also, looking at attending meeting with Staff and the governance of the District, that was not the role of our attorneys. Their role was to keep us from having Open Meeting Law complaints and hard core litigation which we have farmed out to Mr. Beko. We have had a real hard time when we had a slew of issues starting in February 2016. This is the cart before the horse and that General Counsel has far too much control over what the District does and to conduct mock meetings before the actual Board meeting is untoward for a General Counsel whoever that is. To Trustee Dent's remarks, we, as a Board, should go through a laundry list because we don't need all these services and perhaps cut them all in half because we are spending a lot of money where we should be cutting back and not increasing.

Trustee Dent asked if we had the contract reviewed by independent legal counsel so that we can make sure the agreement is compliant with our policies and Nevada law. District General Manager Pinkerton said no. Trustee Dent said it seemed like we jumped the gun as we should have done that. He doesn't have anything against Hutchison & Steffen as his only dealings have been with our attorney Jason Guinasso.

Trustee Morris said that he didn't recall any discussion where we were potentially interested in changing the services for the General Counsel when it was brought and that there was no need to change them because whoever counsels us, we were comfortable there. He is surprised that there weren't more law firms to responds but that it boils down to two high, well qualified and experienced firms, and then it comes down to cost and either we pay $144,000 to Hutchison & Steffen or pay McDonald Carrano $240,000 plus any additional work to be done. Hutchison & Steffen hourly rates are also less and we know we have a small litigious group thus we will have to call upon them. Because they are both reputable firms, why would we want to pay more if we are getting the same quality of service? It is an easy decision for him to make and if the committee got five firms, it might be a different decision but we have a black and white decision before us which is $144,000 per year plus reasonable hourly rates or $240,000 per year and higher rates; he is happy with these rates.

Trustee Dent said we only got the responses we did because the ad ran for four days and he specifically brought up having outside counsel to review the agreement and when he asked about what we would have them do, he was told it was not the time and that we would have the discussion later so when are we going to do that. We need to do a better job at vetting the attorney as we could have more options and we should have four or five. We, as a Board, should determine which two or three go after we decide what we want our counsel to do.

Trustee Callicrate said that he agrees with Trustee Dent on having an independent counsel do a review. He appreciates the work done and now we have an opportunity to take a breath and put this out for a longer period of time and seek out the professionals and see if we can bring in qualified individuals on a more limited scope of works for the needs of the District, Board, and the community. We need to reset the tone to show the community we are trying to do this as effectively as possible and trying to work in a more consolatory way. It would be a greater service, in the eyes of the community, to put out a more limited scope of what we want, shop that around for more than four days, as he too is surprised with the response. If we have the same two, we are doing a disservice to our community.

Chairwoman Wong asked the District General Manager to describe the process. District General Manager Pinkerton said that marketing people are

tracking all these ads and they have a service that tracks RFP's or RFI's and when you post it on a public agenda, people are aware of it.

Chairwoman Wong said she hears your concerns about wanting to revise the scope of duties but in her mind, in order to protect the District, and not the Board, Staff or the General Manager, but the District as a whole. Her concern with limiting is it will open ourselves to potential areas of risk. Any General Counsel that we have, there is a level of professional responsibility and that encompasses it and that by limiting that we are opening ourselves for more risk.

Trustee Dent said it is quite the contrary as we are already open to risk as we got into litigation without the Board giving its approval, Staff sold land without Board approval, paying fees on public records that we don't give us, and we have an outside attorney handling that who he called and he hasn't had a response in six days. Based on the current set up, it is not working for us, it is not working for the community. Our attorney is used as a weapon against us and our community and we need to rein that in and set responsibilities and follow Resolution 1480. The General Manager is not supposed to be managing the attorney, he can manage everyone else, and we need to do a deeper dive into this. The contract expired in December of 2018 and we, as a Board, need to have this discussion of what do we want and how much do we want to spend. Previous Boards were spending $5,000 a year. Our own former General Manager said he couldn't imagine what we could be spending this amount of money on so the District has survived fifty years on a lot less. Let's discuss this as we should.

Trustee Callicrate said that Mr. Brooke came close to $10,000 to $12,000 per month when there were voluminous briefs going back and forth to the courts. That was then farmed out to Mr. Beko in Reno and we then incurred $90,000, then $45,000 and then $55,000 so we, as a Board, need to have a much stronger control over the attorney. The General Manager doesn't have the authority given that it is against our own Board policies. In light of what has happened in the Attorney General office, he doesn't think this is going to set us in the right light with what the community wants us to do. He can't justify $12,000 per month; he would like to spend half of that especially when you look at what we pay versus other GID's. Getting ourselves into more Open Meeting Law complaints is setting bad precedence so let's take a step back and reassess what we want. Let's re-establish and then go out to specialized firms and with that we would be far, far, ahead.

Trustee Callicrate said he would like to move to put this on hold and pull this. Reassess what we are doing and then reagendize for the next couple of meetings and let things calm down and see what we need to have in legal services. Trustee Dent seconded the motion.

Chairwoman Wong asked for comments, receiving none, she called the question – Trustees Dent and Callicrate voted in favor of the motion and Trustees Horan, Wong, and Morris voted against the motion – the motion did not pass.

Trustee Horan said that a number of the comments relative to the legal counsel and the Open Meeting Law he thinks there is a lot of misunderstand in that as his understanding is that there have been twenty six Open Meeting Law allegations, not violations and that anybody can write those. There have been three where there were some issues with one being about a clear and complete agenda which again is an art and not a science. Another was the results of minutes not being approved timely and the interpretation by the District and that was corrected and that is was not a question about the minutes not being available. The Attorney General was very specific that they were not approved timely but that the minutes were available. The third one was the one tonight and there is a clear disagreement about the General Manager had that authority and there is some evidence found that the General Manager had that authority.

Trustee Dent said that he doesn't think that exists and if you could provide that it would be great. Chairwoman Wong asked Trustee Dent to let Trustee Horan finish.

Trustee Horan said he didn't accept the argument and it was rejected but that he doesn't know if those were the specific words or not.

Trustee Dent said he would like to see it as he has heard it said but it doesn't exist so he would like to see it.

Chairwoman Wong again asked Trustee Dent to let Trustee Horan finish.

Trustee Horan said that there was another one regarding an allegation about our Chair that was found not to be a violation. There have been a lot of allegations so to say there have been a lot of violations is not true. We strive not to have any of them but we can't expect people to not file those and if

we make a mistake, we correct it. To say otherwise is egregious and an overstatement.

Trustee Dent said we have had seventeen violations with fifteen times being meeting minutes.

Trustee Horan said you can call that fifteen times but he disagrees and it was one time and it has been corrected.

Trustee Dent said he is just using their numbers.

Trustee Morris said it is correct from his recollection and let's go back and check the minutes. Trustee Morris then said that Trustee Callicrate inferred that our Counsel went to the Supreme Court spending our money without any Board approval. His recollection is that those matters came to the Board, we voted, and that it is a continuing matter that we continue to vote upon. Trustee Dent asked what Trustee Morris was saying. Trustee Morris said he is responding to what Trustee Callicrate said and that the only time we have gone to the Supreme Court is with the Katz case. All those matters came to the Board and we voted on them. Chairwoman Wong said that is correct. Trustee Dent said it didn't happen to GSGI. Trustee Morris said it didn't go to the Supreme Court and he is not the lawyer in the room but there are those that are not unbiased in this and contracted with him and sent our diabolic surveys. The matters were settled and nothing at the behest of GSGI after a preliminary injunction was grant to the District, a settlement conference occurred and settlement was agreed. Chairwoman Wong said she is not sure if this does any good to rehash any of this and should we be rehashing every piece of legal conversation or vote on this and move forward.

Trustee Callicrate said that he thinks it is critically important if we have all these issues from the last four years on the continuance of District General Counsel's services. There has been no third party review of the legal contract and statement of what we are trying to have our legal counsel do. This could be a tremendous misstep and we have the opportunity, if it is meant to be, to have one or two more meetings go by and go out and re-submit an RFP and see if we get additional replies. We need to discuss responsibilities of what our General Counsel services should be. He was caught off guard as he thought we would be discussing this and then over the next couple of meetings, vote. Thinks it is prudent to take a step back and take a look at this because he can't support it as written. He would like

to have more discussion about the restrictions we put on legal counsel and that he is trying to be upfront and find some commonality.

Trustee Morris said, to one point, this is a question for the General Manager and General Counsel and that is the external review of our contract – what would be the cost of doing that. District General Manager Pinkerton said he has done a lot of these and your attorney has an ethical duty to give us a contract and while he doesn't assume that it isn't mutually beneficial, this agreement has stood the test of time. It is up to the Board and it would be between $5,000 and $10,000 to review.

Trustee Callicrate said that he has an observation to bring up and that was about the General Manager maintaining direct supervision. There are opportunities to really work through this and come up with a great situation and again if Hutchison and Steffen tightens it up, great, and if they don't, then it is someone else and at a smaller amount. The Board has opportunities that we haven't exercised and he has weighed in enough; his motion died so it is up to the majority of the Board.

Chairwoman Wong asked District General Manager Pinkerton if he knew what other entities pay for their legal services. District General Manager Pinkerton said it is always hard to do an apples to apples comparison so we tend to look at limited entities; City of Truckee pays $350,000 per year, Boulder City is at $500,000, Elko is at $600,000 and they have a smaller budget. If you take a look at South Lake Tahoe, they spend $874,000. If you are looking at a typical in-house counsel with salary, benefits, and a paralegal then you are looking at between $300,000 and $350,000 and you don't get the full resources of a full firm. Agencies our size prefer to get all the services and our retainer is on the lower end of the size and scope of duties.

Trustee Callicrate said that the billable hours, which is customary, may be seen as a conflict of interest as additional hours of billings is a potential to generate additional opportunities which has many people concerned. This is strictly about professional services and not the individual so he is trying to be as clear as he can and that he is going on dollars. District General Manager Pinkerton said that we do keep most of those services in house and when finding a problem, it is something that the General Manager, Board, and Legal Counsel discuss. We also have the situation where the POOL/PACT may cover. The only specialized legal service was the solid waste contract where we did use a separate counsel. What we see is the

general retainer services are just like the insurance dollars we pay to the POOL/PACT and something we can get back especially when we are doing millions and millions of dollars of contracts. For our employees, we need counsel for most employment matters to make sure we do everything we can do to be responsible. All it takes is one bad decision. His decision to do the previously mentioned lawsuit (GSGI) was about contract enforcement and he didn't think it would cost that much so the detail is the amount of service and we get hundreds upon hundreds of hours of service and when the other firms came in, they saw that.

Trustee Dent said that the Board never determined the duties and responsibilities for legal counsel. District General Manager Pinkerton said it was outlined in the cover letter and was the same we have offered for the past four years. We, as the professional Staff, recommended the status quo because we want to responsibly manage the assets of the District.

> Trustee Horan made a motion to approve the three year agreement with Hutchison & Steffen for attorney services to the District. The monthly retainer fee is $12,000 per month or $144,000 per fiscal year. Trustee Morris seconded the motion.

Chairwoman Wong asked if there were any further comments.

Trustee Horan said that some good points have been raised and while the performance has not been perfect, it has served the District and he is excited about this firm and it is their reputation that is on the line. If our current counsel was a part of our previous smaller firm, he would have had serious thoughts about that. We can talk about the RFI which got us two high quality firms. Price is not a required factor but we got an attractive fee arrangement from a broad based firm that we have experience with so we don't have to train a new firm which was one of the primary drivers.

Trustee Dent said that General Counsel Guinasso lied to this Board regarding the chart of accounts, the premise for GSGI was for the customer data that IVGID gave to GSGI which doesn't exist, and the Board didn't grant the authority to sell public lands – we have been directly lied to. The alleged conflict that he had was bogus because General Counsel Guinasso cannot stop him from attending a meeting as that is his decision and the ethical decision lies with him and thus asking him to leave was wrong. Mr. Guinasso wouldn't give a legal update because he was present and that was wrong. Keeping a Trustee out of a meeting is illegal as well. He didn't understand

or push back because he didn't get it. So he asked General Counsel to get him some guidance from the Ethics Commission. He said he would and that he would get something in the next week or two; nothing happened. Then there was a meeting to talk about GSGI litigation and the General Manager told us he relied on General Counsel guidance. Maybe he is disturbed, maybe it was retaliatory but on March 9, the same date you were meeting, General Counsel filed an Ethics Complaint against him. General Counsel named Trustees Morris and Wong as witness to something that didn't happen. Trustee Dent continued that he hired counsel from Las Vegas who sent a letter that took six months to get an opinion and to get input from the General Manager. He doesn't know where this all this goes but we do need to reconsider this situation here and figure out a different way forward because this General Counsel has a conflict.

Trustee Morris thanked Trustee Dent for his comments. We are all entitled to our opinion, thank goodness, and that we can have a healthy debate. However, Trustee Dent didn't say it was his opinion rather he stated it as fact. You are entitled to your opinions regarding an Ethics Complaint against you and whether he responded or not. But you just laid out things as if they are factual and they are not. Trustee Dent asked what was not true. Trustee Morris said when you said he lied to us. Trustee Dent said he said the Chart of Accounts doesn't exist and you honestly believed that. Chairwoman Wong said that is a gross mischaracterization of what he said as he said it didn't exist as a public record. Trustee Morris said you have to be careful with your words as you exaggerated. Trustee Dent said that the Chart of Account existed; can we acknowledge that. Chairwoman Wong said that Trustee Morris has the floor. Trustee Morris said that he one hundred percent believes that our General Counsel has never said anything to us that he doesn't believe is not true. We have learned that the ways of doing things in the past had to be acted upon and corrected. One of the things that we corrected was the we clarified and changed the policy that the General Manager needs to come to the Board before initiating any legal action. Whether that should have been done before is always worthy of a discussion and we have agreed what we are going to do in the future. He didn't have the opportunity to write down all your comments that you made but he does think that you made a gross mischaracterization of many things that have occurred on this Board since he has been a part of it and that there may or may not be others. Chairwoman Wong said that she appreciates the comments everyone has made. We have two very reputable firms that went through the entire process so she doesn't think we can go wrong. In terms of the comments about the General Counsel, in general, we don't always

agree on everything and what she does respect is that he has always been honest with her about discussions, items, or questions and she is very much appreciative for having Mr. Guinasso as our legal counsel. She agrees with Trustee Morris that has been a lot of gross mischaracterization about things that have happened in the past. She is most disheartened because we have addressed the Open Meeting Law complaints and we have taken corrective actions and we have concluded on these legal actions. This Board needs to accept them and use them as learning experiences and move forward. We are a Board of five volunteers which means all of us can make mistakes and that's why we have a professional staff and legal counsel. If we want to talk about why we can move forward as a Board, this conversation is it.

Trustee Callicrate said before the vote is called, he has two things to bring up – he appreciates the comments and valid points. Do find it very alarming, as this is the first he has heard of it, that our own legal counsel or prior firm would file an Ethics Complaint against one of the five Trustees. His jaw is still on the floor as he had no idea that had taken place. That should be a huge alarm bell to the Board and the community in general and concurrent with that, to have two Trustees named with bona fide affidavits in this complaint is a tremendous conflict of interest. There are two Trustees that have been cited in an Ethics Complaint against one of their colleagues so to vote, that can't stand as it is overwhelming in the conflict. We need to do a much better job, as a Board, and put this on hold. This ethics thing – it is the first he is hearing of this. Chairwoman Wong said that she has no idea of the details. Trustee Callicrate said to better serve the community, we need to have the information and find out about this Ethics Complaint and the facts because he needs to know because this could potential alter moving forward on this item. He doesn't want to see any one of us have a conflict of interest as we have way too much stuff to get done and this is critical so really listen to what he is say. Don't want to create a legal issue into hard core litigation. In light of hearing this information, he doesn't think we can vote on this without a conflict of interest. He is shocked and sorry for rambling but he had to say this. Chairwoman Wong said it is up to Trustee Dent if he wants to discuss that as that is no one else's decision to make except Trustee Dent. Trustee Callicrate said he was talking about you and Trustee Morris and voting to move forward on the attorney who has filed a violation. He doesn't want to embroil us in a lawsuit moving forward; he is really concerned. Trustee Morris said he categorically doesn't see any conflict with the General Counsel raising an Ethics Complaint or doing so against him or the public or against you. While he is not well versed in Ethics Complaints handling, he does believe there is a separate Board and that it will play out

however it does so. As for becoming a Trustee, he was elected and whilst he doesn't recall the exact oath of office, one of the things in his heart is to speak the truth, look at the facts, and make the decision that any reasonable person would make. If he is interviewed in this Ethics Complaint, he will tell the trust and expect the same if the situation was reversed. He sees no issue in participating in this motion. Trustee Dent said you can file a complaint against me and I can do the same to you. Our General Counsel told him that he had a conflict, he didn't think he had one; said he can't vote in a closed meeting and he only had an ethical matter and you can check the Nevada Revised Statutes. He then asked the General Counsel to put an opinion together and to reach out to the Ethics Commission and he told me he would do that. Then all of a sudden, after not doing that, an Ethics Complaint is filed against him by legal counsel. He is our attorney that we go to for legal advice and in theory he is filing a complaint against you based on the issue in front of us. And you don't see an issue with that? Trustee Morris said in a legal non-meeting we can't discuss an ethics issue and we can't take a vote. A legal non-meeting, one of the key elements is for the attorney to bring forth information to us about issue that should fit into that, we don't debate it or vote on it. In the legal non-meetings, we often had information that pertains to the running of the District and he sees that as it should be. He recalls the meeting where you were asked to leave and it was the night that the lights went out. You were asked to excuse yourself and you objected. You were not commanded to and the meeting never occurred because with the lights being out that meeting was adjourned thus he fails to see any issue. Trustee Dent said you don't see an issue with your attorney doing this. Trustee Morris said he wasn't sure what Trustee Dent was asking him to agree to.

Chairwoman Wong said that the Board needs to end this conversation and that she does need to make one disclosure; she did know about the Ethics Complaint as Trustee Dent's attorney sent a letter to her that was forwarded to District General Counsel Guinasso however she doesn't know the contents.

Trustee Callicrate said there remains a conflict of interest and this needs to be dropped from the agenda because you and Trustee Morris have a problem and while he hopes you don't have a problem, you are the Chair so do what you want.

Chairwoman Wong, hearing no further comments, called the question – Trustees Wong, Morris, and Horan voted in favor of the motion and

Trustee Dent voted against and Trustee Callicrate voted against with protest. The motion passed.

At 9:42 p.m., Chairwoman Wong called for a recess; the Board reconvened at 9:50 p.m.

G.5. Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong gave an overview of the submitted memorandum.

Trustee Dent said that he likes that this is being brought back to the Board as it gives us a starting point. Are we going to have a discussion or a meeting? Or maybe we will be having some action items or are we going to dive into those or others. Chairwoman Wong said that the main priorities are to specific action items and we did this two years ago. Trustee Dent asked if we are going to have it in the packet for the meeting so we are not reinventing. Chairwoman Wong asked the Board Clerk to send out to the Board the recap that you did and add to the next agenda.

Trustee Morris said that he liked the idea very much of having these as overarching goals, etc. and that his one concern is that, in retrospect, looking at all that we thought when we did is probably a lofty task of doing everything and is not achievable. We need to decide what our roadmap is and break it down amongst all of these things and actually achieve as a small number of them as a check and balance and make sure we are headed in the right direction.

Trustee Callicrate said he likes the general category because they are critically important or at least parts of them. Doesn't need to be a long drawn out session so let's have something specific, like two hours, be time specific and drill down. We need to move through this and come up with two or three more points. He likes actionable items and would like to have a standalone, couple hour workshop.

Chairwoman Wong said she too would like a separate workshop so when we get to the long range calendar, let's set a date. Please come up with your thoughts about what we have accomplished, what we need to do, etc. so we are all in agreement.

G.6. Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong gave an overview of this agenda item.

Trustee Dent said are we going to go through each of these titles and get a draft version or have them all in one grouping. Do you have anything regarding Title 1, agenda packet page 441, amending the IVGID Code as it relates to the management by the District General Manager as we should all be clear that all of the responsibility is with the Board to manage those items and he wants to ask the General Manager to bring this forward but he doesn't know how to do this. Chairwoman Wong said that relates to amending the code. Trustee Morris said that anything in yellow is all proposed and that it doesn't exist anywhere. Trustee Callicrate said he was at that meeting and this jumped out at him as well. He remembers something elsewhere that slightly changed the responsibility of the Board and then delegated it to the General Manager. That was the only thing that jumped out at him. It makes it very clear that the Board has the responsibility for the code and management thereof unless we delegate. Chairwoman Wong said it appears we are all in the agreement and that she has provided her comments that are to be included. Trustee Callicrate said at first blush, it is a good first step, but there is a lot of work ahead for us. Chairwoman Wong said her other comments are about readability, legalese, and getting it closer to something the lay person would understand. We can address that now and then come back to Title 1 and see how the pieces fit together. Trustee Dent said his question is do we see it all such that here is our draft and are we all in agreement on that. Trustee Morris said as we go through this are you seeking confirmation that we have finished a section and that we may come back to it. The first chapter is relatively simple and we aren't locking anything in stone as we will get the whole thing then the Board agrees that's it. However, plain English would be good. District General Counsel Guinasso said that one of the reasons that the first chapter is legalese is that it sets the tone and we will come back to terms to define. Today was a good example regarding net position, etc. In that section you will find all those terms of art. Title 1 is the one section with the most legalese by necessity. All the highlighted sections are suggestions that need to be put in there. As to amending the code, think about what the process and procedure you want and think about what the schedule is that you want to keep. Going forward, you will review sections of the code and in two or three years you will have touched every title and it is of note that this will require a lot more work of you. Chairwoman Wong said we can come back to this at the end.

Chairwoman Wong said as to the titles to tackle next she is thinking that Title 5 because it is related to the budget process as well as finances and property. Trustee Dent asked to prioritize the Ordinance 7 title as we have tried to tackle that several times so could we put that as a priority. District General Manager Pinkerton said you had your workshop where you started to flush it out and noted that Ordinance 7 will become a higher priority for the Board as you will need to have a higher philosophical discussion and that at your next meeting, Staff will have 4th of July and beach updates. He would ask that the first shot at Ordinance 7 would be sometime during the summer. Trustee Dent said he agrees and that we have gotten feedback for years and that he would like to start looking at it now and throw out what he is thinking. District General Manager Pinkerton said instead of doing this at the end of a meeting and in order to facilitate a more robust meeting, he would recommend doing it as a retreat. Chairwoman Wong said she would like to tackle Ordinance 7 after the budget and tackle Title 5 during the budget and then kick off Ordinance 7. District General Manager Pinkerton suggested April; Trustee Dent said he is okay with April. Trustee Callicrate said he likes that idea and wants to get it on our radar sooner rather than later. District General Manager Pinkerton said he will put it on the calendar for April 10. Trustee Morris asked which title. District General Counsel Guinasso said it was split into two titles – 9 and 10. Chairwoman Wong asked if we could get a condensed table of contents with titles only and then the articles. District General Counsel Guinasso said that was page 23. Chairwoman Wong said she would like that moved to the front. Trustee Dent asked that page numbers be put to it. District General Counsel Guinasso said that Title 9 is beaches and Title 10 is Community Services and that this is a proposal that you have to discuss and debate. Trustee Morris said when we get to it, agenda packet page 435, Title 9 is about beaches and there is a lot of stuff – it has only got one page so is there more to come on that. Chairwoman Wong said it is four pages. District General Manager Pinkerton said right now it is all in Ordinance 7 so there is nothing new. Trustee Morris said so agenda packet page 246 would go to page 435. District General Counsel Guinasso said that is what you get to debate. Trustee Morris said thank you and that he now understands.

Chairwoman Wong said that our next title will be Title 5 then in April we will work on Titles 9 and 10.

G.7. Election of Board Officers for 2019 – effective at the end of this meeting

Chairwoman Wong said she doesn't know how this will shake out but that it has been a pleasure serving as your Board Chair and turned over the elections to the District Clerk.

District Clerk Susan Herron said that the nominations are now open for Chair or a slate of officers.

Trustee Morris said he would like propose a slate of officers as follows:

Chair – Trustee Wong
Vice Chair – Trustee Horan
Treasurer – Trustee Morris
Secretary – Trustee Dent

Trustee Dent declined to be Secretary and asked if Trustee Callicrate could be Secretary.

Trustee Morris revised his slate to read as follows:

Chair – Trustee Wong
Vice Chair – Trustee Horan
Treasurer – Trustee Morris
Secretary – Trustee Callicrate

Trustee Horan seconded the revised proposed slate of officers. Chairwoman Wong asked for comments, receiving none, she called the question and the slate of officers' motion was passed unanimously.

G. DISTRICT STAFF UPDATE *(for possible action)*

G.1. General Manager Steve Pinkerton
- a. Mountain Golf Course Clubhouse
- b. Pending FEMA Reimbursements

District General Manager Pinkerton gave a brief verbal update and said regarding Item G.1.a. that Staff is awaiting information from the insurance company and that Staff is about three weeks away from submitting plans for permits. The District does have insurance proceeds available for paint and carpet and we have a very good interim plan for this summer. This will be pretty close to status quo and it will allow the District the time to work more

on this and get a more realistic proposal to bid out and then proceed with the work; he will provide another update at the next meeting.

Trustee Callicrate said thank you for the update and knows that he has expressed concerns during the last two times and that based on the prior stated golf wishes/needs, he would ask that this be looked at as the whole property to include the cart barn and maintenance facility and see if there is some way to justify a complete rebuild. He doesn't want to see the District getting into the oldest building and this building is a wreck as he worked there and he knows that the cart barn has its own issues. He wants Staff to look at the bigger picture when getting into this project and if that is going in for $1.5 million dollars or $2 million dollars, we need to have another option other than remodel. It is his own personal feeling that in looking at the whole picture and the broader site which is a spectacular setting, we need to have a flexible building with everything and have it make sense. Two buildings held together with Band-Aids and bailing wire is not good as these facilities are woeful and long overdue for replacement. District General Manager Pinkerton said that on March 18, we can present the Board, in the CIP, with the numbers as the timing is perfect.

District General Manager Pinkerton said regarding Item G.1.b., that a member of the public had some questions about FEMA reimbursements; we are awaiting reimbursements of about $12,000 for the wetlands, $38,000 for Diamond Peak and $331,000 for the culvert and reminded everyone that reimbursement take time.

Trustee Morris asked if the Board could get a refresh of what our total FEMA dollars were/will be versus our costs. Director of Finance Eick said that each one of the FEMA grants have a different matching percentage and that generally speaking they are from twenty five percent to seventy five percent of the costs. For the Diamond Peak building, they are covering a smaller portion with the insurance proceeds being almost $90,000 and the FEMA grant being $38,000. On the culvert, it was fifty to seventy five percent and we extended the scope of that project and found some additional costs but he doesn't have an exact amount. In terms of what was represented, we were given a grant, we did the work, and applied for the grant which is not the exact answer. Trustee Morris said he was talking about the Diamond Peak culvert and the damage from the snow disaster and that what he is wanting ultimately is to have a summation of what was spent on that repair in total dollars and how much did it cost us because of insurance and FEMA.

Director of Finance Eick said he will get you that information as it spans multiple fiscal years and that it will go into the next General Manager's report.

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

1. Regular Meeting of January 23, 2019

Trustee Dent said that Ms. Miller had some issues with these minutes. Chairwoman Wong said let's append the minutes with her e-mail at the end.

Chairwoman Wong made a motion to approve the minutes as submitted but include the e-mail written by Ms. Miller as an attachment. Trustee Morris second the motion. Chairwoman Wong asked for comments, receiving none, called the question – the motion was passed unanimously.

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso
    a. Possibly review and discuss Office of Attorney General (OAG) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – ***Finding by OAG of no violation***

District General Guinasso gave an overview of the submitted memorandum.

Trustee Horan noted that in the last paragraph, the Attorney General does give credit to District Counsel Guinasso about stopping us from discussing other items.

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*

Chairwoman Wong said that she, District General Manager, and the Director of Parks and Recreation are going to Washington D.C. in March to visit the Nevada delegation and our legislative advocate Mr. Faust.

Trustee Morris said that on Friday, February 8, he will be attending the meeting of the Washoe County Debt Commission as there is a tied vote on representation and it is his understanding that the representative will be selected by the drawing of lots and he will report the outcome at the next meeting.

Trustee Dent said that the Nevada League of Cities had their in vesture luncheon and that they will have subcommittees, etc. Chairwoman Wong said she will attend the Mayors and Chairs when she can and call in at other times.

K. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see Public Comment Advisory Statement above.

Frank Wright said he has been sitting out front and listening to the accolades given to District General Counsel and his competency; he is not competent, he shouldn't be an attorney, and he should not be representing our District. To say that Mr. Wright had x number of them, well, a lot of them have required you to take action. To also have a Frank Wright's greatest hits and to go through the public comments period and put those together as a compilation is sick. If he is going to be fair, put everything there – why not have a complete compilation? When he calls him a liar, it is because he has basis. When he said Trustee Horan didn't live here, well, he hasn't lived here for six months. Trustee Morris on the Debt Management Commission – he is now in bankruptcy court and being investigated for Medicare fraud and he is our Treasurer; you can make this stuff up. And District General Counsel, you can cut this one out too. Now, tonight, we find out that you filed a lawsuit against FlashVote and then went an Ethics Complaint against Trustee Dent.

Linda Newman said she will be brief; let's be clear, Trustees Wong, Horan, and Morris took action to initiate the action of a lawsuit against a local business and we know this to be true because Chairwoman Wong said so in her campaign. This lined the pockets of the attorney in the amount of $50,000 and Counsel falsely said that the General Manager did. The Attorney General found that Trustees Wong, Horan, and Morris acted wrongly. Also they stated that the District General Manager didn't have any authority. This harm is beyond repair. It is an assault on all standards and District General Counsel should refund, to the District, his annual fees and the fees for the unauthorized lawsuit. District General Counsel shouldn't be seated here and she doesn't understand the objectivity that three Trustees would give him a three year contract.

Trustee Morris said that Mr. Wright stated that he was being investigated for Medicare fraud; he is not being investigated for Medicare fraud and he has never been in the Medicare business.

L. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR *(for possible action)*

District General Manager Pinkerton went over Long Range Calendar.

Trustee Morris said regarding the meeting of February 27, he may begin the meeting by attending via telephone and then physically join it in progress.

Chairwoman Wong said please add March 13 as a Board Workshop and then a utility rate discussion on March 18.

District General Manager Pinkerton said we will also add to April 10 a discussion regarding Title 9 and 10 (Ordinance 7).

Trustee Callicrate said he would be out of country, in Italy, in June but that he will call in.

Chairwoman Wong asked to move the October 23 meeting; Trustee Dent stated he has a conflict with October 9.

Trustee Callicrate said that he hasn't been getting the Board meeting dates so please resend those to him.

District General Manager Pinkerton asked how the Board would like to handle the Board Work Plan workshop. Trustee Morris said he would like to do it sometime during the day. Chairwoman Wong said she is challenged on daytime. Trustee Dent recommended starting at 5 p.m. The Board agree to having a workshop on Thursday, March 14 starting at 6 p.m. and ending at 8 p.m. for the Board Work Plan.

M. ADJOURNMENT *(for possible action)*

The meeting was adjourned at 10:50 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 Judith Miller (1 page): Gmail – Minutes of the January 23, 2019 BOT Meeting dated Wednesday, February 6, 2019 at 6:03 AM

Submitted by Aaron Katz (32 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item F(1(b) – Utility Rate Study

Submitted by Aaron Katz (4 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item G(4) – Judicial review of the office of Attorney General's ("OAG'S") findings and conclusions in File No. 13897-257 finding an Open Meeting Law ("OML") violation

Submitted by Aaron Katz (12 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item C – Public Comments – More evidence the advice given to the Board by its Staff and Attorney are flawed – here lobbying to influence legislation

Submitted by Aaron Katz (15 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item J(1)(a) – Open Meeting Law ("OML") File No. 13897-305 – The office of the Attorney General ("OAG") did not find that Chairperson Wong's July 6, 2018 letter to the U.S. Department of Transportation ("USDOT") impermissibly committed IVGID to spending $7.5 million in matching build grant funds to construct Tahoe Transportation District's ("TTD's") Bike Path Project

Submitted by Aaron Katz (15 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item C – Public Comments – Failure to acknowledge findings of fact and conclusions of law re: Open Meeting Law ("OML") violation

Submitted by Mike Abel (1 page)

Submitted by Sara Schmitz (1 page)

Submitted by Linda Newman (10 pages): IVGID February 6, 2019 BOT Meeting Public Comments by Linda Newman – To be included with the minutes of the meeting

Submitted by Kevin Lyons (1 page) NRS Chapter 195 – Parties to Crimes

Gmail Judith Miller <[redacted]>

Minutes of the January 23, 2019 BOT meeting

1 message

Judith Miller <[redacted]> Wed, Feb 6, 2019 at 6:03 AM
To: wong_trustee@ivgid.org, horan_trustee@ivgid.org, dent_trustee@ivgid.org, callicrate_trustee@ivgid.org, morris_trustee@ivgid.org

Members of the Board,

Once again, our Board Clerk has failed to provide an accurate summary of my public comments. I do not feel it is my responsibility to do her job. I know the task is time consuming, but of extreme importance since streaming video and audio recordings are only temporary. This is the only permanent record of what has transpired. And since our Board correspondence, against the directives of the Board, is no longer included in the Board packet, my objection to Ms. Herron's minutes will also not be a permanent record unless I include them in my public comment.

Here are my objections to the January 23, 2019 IVGID BOT meeting minutes prepared by Ms. Herron.

1) She did not properly identify the document I was quoting so readers will not be able to find the text of that document.

2) She mistakenly used the phase, customer service "reality", instead of "mentality", making the sentence incomprehensible.

3) She failed to capture the essence of my comment, i.e. The State of Nevada instructs that it is the duty of its public records officers to assist citizens in identifying requested public records if the request is unclear. Citizens of our small community deserve at least as much assistance in their public records requests as the State of Nevada requires of its public records officers. Mr. Pinkerton's assertion that Ms. Herron has to literally respond to a citizen's request for public records is untrue. Ms. Herron should communicate with the public to determine what records are being requested.

I and others have come to the Board on numerous occasions to ask that the minutes be modified because our comments were in-accurately summarized. I do not think I should be placed in the position of having to rewrite the minutes. I ask that you 1) Instruct Mr. Pinkerton to immediately relieve Ms. Herron of her duties of preparing/revising minutes and assign those duties to someone more capable. She has repeatedly proven herself incapable or unwilling to perform this task in a professional and unbiased manner and 2) Refuse to approve the minutes until they are modified to accurately reflect what has transpired.

Thank you for your attention to this matter.

Sincerely,

Judith Miller

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM F(1(b) – UTILITY RATE STUDY

Introduction: Here staff have asked that a public hearing on their proposed water/sewer rate increases be set for April 10, 2019 without the benefit of another hearing on its rate study, and on the Consent Calendar no less! This is after representing that this agenda item will expressly involve "review (and) discuss(ion) of staff's rate study. A disingenuous description given staff knows that under Board Policy 3.1.0.15[1] there can be no discussion whatsoever of consent items. Moreover, this item has been improperly placed on the Consent Calendar. Per Policy 3.1.015, "a memorandum will be included in the packet materials for each Consent Calendar item (which)...should *include the justification as a consent item* in the Background Section." Although staff have prepared such memorandum[2], nowhere in the Background section[3] do they set forth the justification for placing this matter on the Consent Calendar. For this reason alone, this item should be transferred to the General Business portion of the agenda. This afternoon I made this request to the Board, and a copy of my e-mail request is attached as Exhibit "A" to this written statement.

Staff's rate study has set the public up for yet another round of increased water/sewer utility rates. Notwithstanding the Board and the public are told that staff's intent is to balance rates "equitably among (all) user classes,"[4] as the reader will see, nothing could be further from the truth. The glaring problem with staff's methodology is at least fourfold. First, staff is using a rate model which for decades has granted preferential and discriminatory rates to IVGID's money losing recreational businesses as well as its commercial collaborators' businesses. Pages 290 and 296 of the AWWA Manual[6] instruct that "while recovery of the full revenue requirement in a fair and equitable manner is a key objective of a utility using a cost-of-service rate making process...rates must be *just...reasonable* and bear a rational relationship to a legitimate government interest." For these reasons, IVGID's rate *preferences and discriminatory rates need to be eliminated.*

Second, staff is able to achieve preferential and discriminatory rates by utilizing ratios based upon "Equivalent Meter Capacity."[5] Thus "the minimum or base system development charge is established for a single-family residential customer (and)...the ratio of the safe operating capacity of

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[1] See pages 12-13 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf.

[2] See pages 8-13 of the packet of materials prepared by staff in anticipation of the Board's February 6, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_2-6-19.pdf ("the 2/6/2019 Board packet")].

[3] See page 9 of the 2/6/2019 Board packet.

[4] See page 29 of the of the packet of materials prepared by staff in anticipation of the Board's January 23, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-23-19.pdf ("1/23/2019 Board packet")].

[5] Staff labels these water meter ratios as a "Capacity Adjustment Factor" ("CAF").

various sizes of meters, compared to the capacity of (the single-family residential customer's)...meter, (is)...used to determine appropriate charges for the larger meter sizes."[6] "*While capacity ratios for larger meters can be computed, the use of such ratios for larger meters may...not provide a true indication of the potential demand requirements of the larger meters,*" rendering IVGID's CAF unfair. Thus ratios based upon a water customer's meter size need to be changed or modified.

Third, customer class. Although "it is common for water utilities to have three principal customer classes [(1) residential, (2) commercial, and (3) industrial]...*many systems...have customers with individual water-use characteristics, service requirements, or other factors that differentiate them from other customers with regard to cost responsibility*" which makes these customer classes inadequate[7]. Here it is unfair for residential customers to cross-subsidize the water rates assessed to IVGID's recreational facilities. Thus *these customers should have a separate class designation.*"[7]

Finally, staff have been and are currently collecting sewer capital improvement charges ("CICs") for phase II of the effluent pipeline project. Yet it is not restricting the expenditure of those monies expressly for that project. As a result, and just like social security for those just entering the workforce, funding for this project is never going to be realized, and the additional CIC charges water customers have been paying since 2011 will never sunset. The Board needs to "get into the weeds" to understand how staff's water/sewer rate model works so it can identify and remedy its unjust, unreasonable and preferential aspects. And that's the purpose of this written statement.

With This in Mind, Let's Review the Facts IVGID Staff Have Glossed Over That Go to the Heart of Their Proposed Water/Sewer Rate Increases:

Both Water and Sewer Rates Are Made Up of Three Main Components[8]: Fixed (aka "ready to serve") charges, variable charges (based upon the units of water consumed/effluent discharged and denoted in "units" where 1,000 gallons of water use = 1 'unit'[9]), and capital improvement charges" or CICs [aka "funds (for) the replacement of water and sewer infrastructure"[10]].

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[6] See pages 324-325 of the American Water Works Association ("AWWA") Manual of Principles of Water Rates and Charges – M1, 6th Ed. (2012) ["the AWWA Manual"]. According to staff (see pages 20-21 of the 1/23/2019 Board packet), this manual "assists all water agencies in developing and implementing rate structures...The District has a long history...of using the principles in this...manual for determining the type of rate structure that we have...It is important to know that the rate structure utilized by the District is (allegedly) a best practice supported by the AWWA and is similar to water rate structures across the United States." Since this manual differs (where noted) from what staff have spoon fed to the Board and the public, I will make frequent reference to those differences.

[7] See page 76 of the AWWA Manual.

[8] See page 21 of the 1/23/2019 Board packet.

[9] See Exhibit "A," page 47, to the current water Ordinance No. 4, "Schedule of Water Service Charges" [https://www.yourtahoeplace.com/uploads/pdf-public-works/Ordinance_4_-_2018_-_Approved_Resolution_1862.pdf (attached as Exhibit "B" to this written statement)], as well as

Fixed charges represent the "costs that are incurred to staff, operate and maintain our (water and sewer) system(s, district wide) prior to delivering any water or treating any wastewater."[8]

Variable charges, whether they be associated with water or sewer[11], represent "the cost(s) to pump (water) out of Lake Tahoe, treat...and deliver it to the customer."[8]

CICs represent the costs to "replace...infrastructure...based on funding the costs of the five-year capital improvement plan."[10]

Since Both Set of Rates Are Principally Based Upon What Staff Calls a CAF Ratio, the Board and the Public Need to Understand Exactly What This Term Means, and How it is Applied: Exhibits "B" and "C" to this written statement both reference a CAF. The CAF[12] is based upon the diameter of a customer's water supply line. But for residential customers (all of whom are assigned a CAF of "1.0"), the larger the diameter, the greater the CAF ratio. Thus a customer with a ¾" water meter is assigned a CAF of "1.0." And a customer with a 10" water meter is assigned a CAF of "76.65." Staff's rationale for assigning CAF numbers is that hypothetically, *rather than actually*, a customer with a 10" water meter is capable of squeezing "76.65" times the volume of water in a given time period, a customer with a ¾" water meter is capable of squeezing. But as the reader will see, since over 60% of residential water/sewer customers are vacation/second home owners[13], they rarely if ever use the hypothetical volume of water that can be squeezed through their water meters. Even when that volume of water is consumed, it is not sustained continuously as it is for Diamond Peak, the Championship Golf Course, the Mountain Golf Course, the Hyatt Hotel and other similar "big ticket" users.

How the CAF Works: The CAF is used to determine a water/sewer customer's monthly fixed charges[9]. Fixed monthly water (currently $11.23) and sewer (currently $18.30) charges are multiplied by the CAF. Therefore a water customer with a CAF of "1.0" pays $11.23/month in fixed charges. A water customer with a CAF of "76.65" pays $860.78 ("76.65" times $11.23) in monthly fixed charges.

Excess water/sewer charges come into play once a customer exceeds his/her/its monthly water allotment. And again the CAF comes into play. That allotment is calculated by multiplying 20,000 gallons of water in a billing period by the CAF (aka "Tier 1 excess water charges"). Once a

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Exhibit "A," page 43, to the current sewer Ordinance No. 2, "Schedule of Sewer Service Charges" [https://www.yourtahoeplace.com/uploads/pdf-public-works/Ordinance_2_-_2018_-_Approved_Resolution_1861.pdf (attached as Exhibit "C" to this written statement)].

[10] See page 22 of the 1/23/2019 Board packet.

[11] According to Exhibit "C," "variable sewer costs...are based on monthly *water* use."

[12] According to page 323 of the AWWA Manual, this is another name for an "Equivalent Meter Ratio."

[13] This is the number that GM Pinkerton, his predecessors and staff regularly tout.

customer uses 60,000 gallons of water multiplied by the CAF in a billing period, he/she/it is assessed "Tier 2 excess water charges"[14].

The CAF is also used to determine a water/sewer customer's monthly CICs[9]. Monthly sewer (currently $14.80) and sewer (currently $30.70) CIC charges are multiplied by the CAF. Therefore a water customer with a CAF of "1.0" pays $14.80/month in CICs. And a water customer with a CAF of "76.65" pays $1,134.42 ("76.65" times $14.80)/month in CICs.

Because Application of the CAF is Flawed, So Are Essentially All of Staff's Proffered Component Water Rates: According to page 325 of the AWWA Manual, "while capacity ratios for larger meters can be (and in IVGID's case is) computed, the use of such ratios for larger meters may or may not provide a true indication of the potential demand requirements of the larger meters." And here it does not "a reasonable indicator for the actual capacity use of (IVGID's high use) customer(s because some)...customer(s) with a larger connection size (namely IVGID)...use far more capacity."[15] Therefore "*developing equivalent capacity ratios specific to a particular utility and its system characteristics is normally desired, as opposed to using a standardized table of meter equivalences*"[16] such as IVGID's CAF ratio. One way to do this would be for IVGID "to review capacity use of customers with larger connections after a specified period of time after which a baseline of historical usage has been established. With this review (would) come the opportunity to true-up (charges)...based on the baseline consumption data."[15] But that's not what staff do and as a result, our CAF is flawed.

To demonstrate the unreasonableness, the Board needs to know data staff has intentionally omitted from its current rate study. For instance, the median residential user's monthly water consumption/sewer disposal and the rates associated therewith, compared to IVGID's/other commercial users' consumption/disposal and the rates associated therewith. So let's get these facts on the table, shall we[17]?

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[14] See ¶5 of Exhibit "B" to this written statement.

[15] See pages 274-275 of the AWWA Manual.

[16] See page 325 of the AWWA Manual.

[17] The numbers which follow come from last year's water/sewer rate survey/adoption: a) pages 27-81 of the packet of materials prepared by staff in anticipation of the Board's regular January 24, 2018 [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-24-18.pdf ("the 1/24/2018 Board packet")]; b) pages 50-68 of the packet of materials prepared by staff in anticipation of the Board's regular February 7, 2018 [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_2-7-18.pdf ("the 2/7/2018 Board packet")]; and, c) pages 47-151 of the packet of materials prepared by staff in anticipation of the Board's regular April 11, 2018 meetings [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_4-11-2018.pdf ("the 4/11/2018 Board packet")].

Fixed Charges: The median residential user's 2018 monthly Water Utility bill totaled $39.79[18]. Of this sum, $30.84 represented fixed charges ($3.76 in customer account fees, $11.23 base charges, $14.80 in CICs and $1.05 in defensible space[19]). Since the number of units of water consumed per user varies, no portion of those variable charges is included in the fixed charge portion[20]. Therefore the additional $8.95/month in the median residential user's monthly water charges ($39.79 less $30.84) represented variable water actually consumed (in this case 5,967 gallons billed at an average charge of $1.50/1,000 gallons/usage).

Because staff have represented that fixed water costs are those "incurred to staff, operate and maintain our (water) system(s, district wide) prior to delivering any water,"[8] and the reader will see below (under the water CIC discussion) the enormous infrastructure required to deliver water to itself (including Diamond Peak and its two golf courses) and its commercial customers, the fixed water costs assessed to commercial customers are disproportionate when compared to those of the median residential customer. Thus contrary to staff's representations, these costs have not been "balanced... equitably among (all) user classes."[4]

Variable Charges: Notwithstanding, the actual charges for residential water customers' variable water use increases (called "excess water charges"): 62% at 20,000 gallons consumed/month [from $1.50/1,000 gallons to $2.43/1,000 gallons (Tier 1)]; and, 148.67% at 60,000 gallons consumed/ month [from $2.43/1,000 gallons to $3.73/1,000 gallons (Tier 2)][21]. Yet because of the way fixed charges for commercial customers' water costs are calculated (see the "How the CAF Works" discussion above), essentially none is assessed excess water charges[22].

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[18] See page 73 of the 1/24/2018 Board packet.

[19] See page 57 of the 1/23/2019 Board packet.

[20] See page 71 of the 1/24/2018 Board packet.

[21] See page 149 of the 4/11/2018 Board packet as well as Exhibit "A" attached to this written statement.

[22] If a commercial water customer has a 3" water supply line, he/she/it is assigned a CAF of "10." This means he/she/it is not assessed excess water charges as long as his/hers/its monthly consumption does not exceed 200,000 gallons (20,000 gallons times "10"). If he/she/it has a 6" water supply line, then he/she/it is assigned a CAF of "33.33" which means he/she/it is not assessed excess water charges as long as his/her/its monthly consumption does not exceed 666,600 gallons (20,000 gallons times "33.33"). And if he/she/it has a 10" water supply line, he/she/it is assigned a CAF of "76.65" which means he/she/it is not assessed excess water charges as long as his/her/its monthly consumption does not exceed 1,533,000 gallons (20,000 gallons times "76.65"). Since essentially no commercial water customer other than IVGID ever approaches these threshold consumption levels, essentially *none* is assessed an excess water charge. If he/she/it were, then his/her/its monthly charges would greatly exceed his/her/its fixed charges.

And because of the "Public Service Recreation" exemption IVGID has created *for itself*[23], its recreation facilities which consume massive amounts of water in excess of their monthly allotment before excess water charges kick in, none *"are not subject to excess water charges."*

Therefore because of the way excess water charges are calculated, combined with the "Public Service Recreation" exemption, ***no commercial water customer*** **pays his/her/its proportional fair share for his/her/its actual water use, compared to residential water customers.**

Uniform Rates: "Uniform rate(s)...imply...that all increments of water provided are associated with the *same* unit cost of service."[24] Thus *"potential cost-of-service differentials among customer or service classifications are not recognized when designating a uniform rate applicable to all general water service customers."*[25] Yet here that's exactly what has happened. Excess water rates are not applicable to all of IVGID's water customers. Which is why excess water rates should either be eliminated, or applied across the board to all water customers.

CICs: Since CIC charges are calculated the same way as fixed charges, the monthly base charge is multiplied by the CAF. Since all residential customers are assigned a CAF of "1,"[26] $14.80/month represents their monthly water CIC based upon monthly median water consumption (at least for

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Consider the commercial water customer with a CAF of "10." If he/she/it consumed 200,000 gallons of water/month, the first 20,000 gallons would be charged $30 (at $1.50/1,000 gallons); the next 40,000 gallons would be charged $97.20 (at $2.43/1,000 gallons); the next 140,000 gallons would be charged $522.20 (at $3.73/1,000 gallons); and the grand total would be $649.40. Now compare this amount to this customer's actual monthly fixed charge of $112.30. Hopefully the reader can see that staff's propaganda that commercial water customers (including IVGID) are paying their fair share of fixed costs *is a lie*. To further make the point, let's consider the commercial water customer with a CAF of "76.65." If he/she/it consumed 1,533,000 gallons of water/month, the first 20,000 gallons would be charged $30 (at $1.50/1,000 gallons); the next 40,000 gallons would be charged $97.20 (at $2.43/1,000 gallons); the next 1,473,000 gallons would be charged $5,494.29 (at $3.73/1,000 gallons); and the grand total would be $5,621.49. Now compare this sum to this customer's actual monthly fixed charge of $860.78. You see the preferential effect to residential customers' detriment, and IVGID's benefit. ***Is this an example of "balanc(ing) costs equitably among user classes"*** staff have represented to the Board and the public (see page 29 of the 1/23/2019 Board packet)?

[23] See Note 2 to Exhibit "B" attached to this written statement as well as §2.40 at page 13 of Ordinance No. 4. This section declares that "accounts where the primary irrigation water use is for outdoor parks and recreation accessible to the public...includ(ing) parks and recreation facilities, golf courses, snowmaking...*are not subject to excess water charges.*"

[24] See page 97 of the AWWA Manual.

[25] See page 97 of the AWWA Manual.

[26] See Note 1 on Exhibit "B" to this written statement.

December 2018) of 1,909 gallons[27]. But for the commercial customer with a CAF of "10," who can consume up to 200,000 gallons/month without being assessed excess water charges, his/her/its monthly water CIC charge is $148. And for the commercial customer with a CAF of "76.65," who can consume many millions of gallons/month[28], his/her/its monthly water CIC charge is $1,134.42.

What are the water infrastructure requirements commercial customers like IVGID require? How about up to "40 million gallons of water for snowmaking use (just) in a season" of 2-3 months just at Diamond Peak[29]? Or IVGID's two Lake Tahoe golf courses, each of which "typically uses 75 million gallons per year in irrigation water?"[29] Or "water...pumps" capable of pumping "as much as 3,000 gallons (of water)/minute"[29] (half of IVGID's system wide capabilities from Lake Tahoe), just for Diamond Peak snowmaking? Or "water...tanks" capable of storing "as much as "3 million gallons" of water just for Diamond Peak snowmaking?"[29] Or a water system that can feed sixty-five percent (65%) of the "4.6 million gallons used community wide...during (just one) 24-hour period (at) Diamond Peak for its snowmaking?"[29] Or the staff coordination necessary for your Public Works "water staff to stay... in close contact with...Diamond Peak's snowmaking staff?"[29] If the Board compares these and the many other undisclosed requirements staff are well aware of yet do not share with the Board and the public, to those of your median residential customer, it should come to the conclusion commercial customers' demands on the public water system are legion compared to those of the median residential customer. Given the median residential customer uses 1,909 gallons of water per month in the winter season, and Diamond Peak uses 40,000,000 gallons in just 2-3 months for snowmaking, why is IVGID only being assessed a maximum of 76.65 times what the residential customer is charged for water CICs[30]? ***Is this an example of "balanc(ing) costs equitably among user classes"*** staff have represented to the Board and the public (see page 29 of the 1/23/2019 Board packet)?

Similarly, Because Application of the CAF is Flawed, So Are Essentially All of Staff's Proffered Component Sewer Rates:

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[27] Look at your December 2018 water/sewer bill. Mine says "consumption for median single family user during current month: 1909." What does yours say?

[28] According to the December 2018 Public Works Newsletter (see pages 466-467 of the 2/6/2019 Board packet), "during a cold spell this winter, Diamond Peak used nearly 3 million gallons (of water) in a 24 hour period;" "Diamond Peak can use (up to)...40 million gallons of water for snowmaking use in a season;" and, "a golf course at Lake Tahoe (and remember, IVGID has two of them) typically uses 75 million gallons per year in irrigation water."

[29] See page 467 of the 2/6/2019 Board packet.

[30] 40,000,000 gallons of water consumed over a 3 month period averages roughly 13,333,333 million gallons/month. Given the median residential water customer consumes 1,909 gallons of water/month during the same time of the year, ***Diamond Peak's demands are nearly 7,000 times more than those of the median residential water customer.***

Fixed Charges: The median residential user's 2018 monthly Sewer Utility bill Totals $62.22[18]. Of this sum, $52.76 represented a fixed charge ($3.76 in customer account fees, $18.30 base charges, and $30.70 in CICs), assuming the discharge of no effluent whatsoever[31]. Because IVGID does not measure the effluent a sewer utility customer discharges into the public's sewer system, variable monthly sewer costs are tied to the user's actual water consumption, and it is calculated at $3.10/ 1,000 gallons[32]. Therefore the additional $9.46 in the median residential sewer customer's monthly utility bill ($62.22 less $52.76) represented estimated discharged sewer effluent (in this case 3,051 gallons of water billed at an average charge of $3.10/1,000 gallons).

Because staff have represented that fixed sewer costs are those "incurred to staff, operate and maintain our (sewer) system(s, district wide) prior to...treating any wastewater,"[8] the reader can see the enormous infrastructure required to deliver sewer treatment services (based upon water consumption) to commercial customers including IVGID[33], and those fixed sewer costs to commercial customers are disproportionate when compared to those of the median residential customer. Thus contrary to staff's representations, these costs have not been "balanced...equitably among (all) user classes."[4]

Variable Charges: Since sewer variable charges are based upon water consumption, I and others I know find it disingenuous that staff are not able to measure effluent discharged into the public's sewer system, the way they are able to measure water consumption. After all, doesn't GM Pinkerton frequently volunteer that he is able to determine the number of people in town based upon the number of toilet flushes?

CICs: When IVGID is placing enormous demands on the public's sewer system compared to those of the median residential customer [perhaps as much as 7,000 times (measured in water consumption)], yet it is paying no more than 76.65 times the sewer CIC costs the residential customer pays, this is *not* ***"an example of "balanc(ing sewer CIC) costs equitably among user classes"*** as staff have represented to the Board and the public[4].

Distributing Costs to Customer Classes[34]: "The ideal solution to developing rates for water utility customers is to assign cost responsibility to each individual customer served and to develop rates that reflect that cost. Unfortunately, it is neither economically practical nor often possible... (Notwithstanding), the cost of providing service can reasonably be determined for groups or classes of

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[31] See page 58 of the 1/23/2019 Board packet.

[32] See Note 4 on Exhibit "B" to this written statement.

[33] During holiday periods, Diamond Peak regularly accommodates more than 4,000 skiers and many hundreds of additional non-skiers per day. If one compares their daily demands on the public's sewer system to those of the median residential customer (especially when more than 60% of them are absent second/vacation homeowners), it doesn't take long to see why a fixed charge of only "33.33" or "76.65" times that of the median residential customer is grossly disproportionate and inequitable.

[34] See page 75 of the AWWA Manual.

customers that have similar water-use characteristics and for special customers having unusual or unique water-use or service requirements. *Rate making endeavors to assign costs to classes of customers in a nondiscriminatory, cost responsive manner so that rates can be designed to closely meet the cost of providing service to such customer classes.*"[34]

"It is common for water utilities to have three principal customer classes: (1) residential, (2) commercial, and (3) industrial."[35] Here IVGID in effect has two customer classes; residential, and commercial[36]. "*Many systems...have customers with individual water-use characteristics, service requirements, or other factors that differentiate them from other customers with regard to cost responsibility. (In these instances,) these customers should have a separate class designation.*"[35] "Water utilities often provide service to certain special classes of customers. (One) such class (is)... irrigation."[35]

"Irrigation is characterized by the relatively high demands it places on the water system... *Establishment of a separate class designation is warranted* when separate metering for...irrigation (as is the case here) is available, as is often the case for...parks, fields, and golf courses...where such loads are significant in the system...The significant demands caused by irrigation (should) be recognized and reflected in the cost to provide this service."[37]

Monthly Defensible Space Costs: In addition to the above-components to a water customer's monthly bill, he/she/it is assessed an additional $1.05 for defensible space[9]. Public utility rates are supposed to be based upon the actual costs the utility incurs in providing the service to its customers. It is not entitled to make a profit on those services, nor to charge for any other costs other than those actually incurred to provide that service. "Defensible space" has nothing to do with a cost IVGID incurs to make water available to its customers. Rather, it is a cost it incurs to create a protective "halo" in the forests surrounding Incline Village/Crystal Bay to protect these communities from a catastrophic fire such as the 2007 Angora Fire which devastated South Lake Tahoe.

Moreover, IVGID has no power to levy fees to "eliminate fire hazards existing within the district" nor to "clear public highways and private lands of dry grass, stubble, bushes, rubbish and other inflammable material which in its judgment constitute a fire hazard" [see NRS 318.1181(2)(3)]. The reasons are at least fivefold. First, IVGID is not "a district created wholly or in part for the purpose of furnishing fire protection." Those districts are the only ones that can exercise these powers.

Second, the only basic powers a general improvement district ("GID") may exercise are those stated in its initiating or supplemental (NRS 318.077) ordinances as long as "one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter (318) designated therein"

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[35] See page 76 of the AWWA Manual.

[36] See page 24 of the 1/23/2019 Board packet. Although staff suggests "IVGID Facilities" and "IVGID Snowmaking" as separate customer classes, in truth they are not. IVGID's facilities are assessed the same as are commercial facilities.

[37] See page 77 of the AWWA Manual.

[NRS 318.055(4)(b)]. Although furnishing facilities for the protection from fire is a permissible GID power [NRS 318.116(17)], it has never been granted to IVGID by the Washoe County Board of Commissioners, either in its initiating ordinance, or through "proceedings...by the board of county commissioners, similar(ly), as nearly as may be, to those provided for the formation of the district" (NRS 318.077).

Third, IVGID has never adopted a NRS 308.030(1) service plan. Because NRS 318.077 mandates that a GID "board shall obtain in connection with each...additional basic power a modified service plan...in a manner like that provided for an initial service plan required for the organization of a district in the Special District Control Law," and here none has been obtained, IVGID has no power to be exercising the basic power to furnish facilities for the protection of fire.

Fourth, the power to furnish facilities for the protection from fire is not a NRS 318.210 implied power because *Dillon's Rule*, which is applicable to IVGID [*Ronnow v. City of Las Vegas*, 57 Nev. 332, 368, 65 P.2d 133 (1937)], instructs that should there be "any fair, reasonable, substantial doubt concerning the existence of power i(t must be) resolved by the courts against the (municipal) corporation, and the power (be) denied" (*Id.*, at 57 Nev. 343).

Fifth, local property owners are already paying the North Lake Tahoe Fire Protection District ("NLTFPD") *ad valorem* taxes so it can provide defensible space services (check your tax bill). Why then the requirement IVGID's water customers pay the NLTFPD a second time under the label "defensible space?"

Here IVGID has discovered another disingenuous means of charging local property owners another fee for services it has no power to furnish. And for simplicity purposes, IVGID has simply incorporated it into its water rates/charges.

There's another reason why this charge is improper. And that's because it is not assessed uniformly against all properties in Incline Village/Crystal. Article 4, section 21 of the Nevada Constitution mandates that "in all...cases where a general law can be made applicable, all laws shall be general and of *uniform operation*. Here IVGID's rates/charges which assess involuntary defensible space charges are not uniform because there are unimproved lots in Incline Village/Crystal Bay which are not receiving water services from IVGID. This means they are not being sent bills which in part, include defensible space charges.

Based Upon the Above, Here Are My Recommended Structural Changes to the Way Components to Our Water/Sewer Fees Are Calculated:

1. **Variable Water Charges Should be Eliminated Altogether Because it is Unfair to Charge Approximately 120 Residential Customers a Surcharge For Their Consumption of More Than 20,000 Gallons of Water in a Billing Period, Yet to *Not* Charge Commercial Customers the Same Surcharge When They Consume Many Times What is Consumed by the Residential Customer;**

2. **Alternatively, Variable Water Charges Should be Applied Uniformly to All Customer Classes at the Same Tier 1 and Tier 2 Rates Assessed Residential Customers;**

3. **Defensible Space Charges Should be Removed From Customers' Water Bills as They Have Zero to Do With the Cost IVGID Incurs to Provide Water Services;**

4. **The Water Public Service Recreation Exemption Should be Eliminated Altogether Because it Represents an Unreasonable Preference Which Primarily Benefits IVGID – the Entity Which Has Adopted It;**

5. **Variable Sewer Charges Should be Eliminated Altogether Because IVGID Has No Means of Measuring Any Customer's Discharge Into the Public's Sewer System;**

6. **A New Customer Class (IVGID Recreational Venues) Should be Created Which More Fairly Apportions the Public's Costs to This Class of Users;**

7. **Commercial Customer's Fixed Water/Sewer Charges Should be Increased Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters**; and,

8. **Commercial Customer's Water/Sewer CICs Should be Increased Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters.**

Only by making the structural changes suggested, can the Board make its water/sewer rates just, fair, non-discriminatory and non-preferential.

Another Proposed Modification to Our New Water Rates/Charges; Backflow Prevention Device Inspection/Testing Fees: "To protect (the) public('s) potable water supply...from the possibility of contamination or pollution by isolating within the customer's internal distribution system...such contaminants or pollutants which could backflow into the public water systems" [see ¶16.01(A)(1) of Ordinance No. 4], ¶¶16.01(B) and 16.03(A)(1) mandate that an approved backflow prevention device be installed on all properties' water service connections. ¶16.03(D)(1) mandates yearly certified inspections and operational tests. Exhibit "C" to Ordinance No. 4 is a "Miscellaneous Fee Schedule." And one of those fees is a $60 backflow device inspection. Notwithstanding "the district reads approximately 4,450 meters...covering 7,966...sewer...customers"[38], ¶16.03(A)(1) of Ordinance No. 2 declares that "no water service connection to any premises may be installed or maintained by the District unless the water supply is protected as required by State laws and regulations and this ordinance (with a)...backflow prevention assembly," and these 7,996 sewer customers have many more than 1,700 backflow prevention devices installed on their properties serving systems for hydronic space heating, in-door sprinklers, and landscape irrigation, page 36 of the 1/23/2019 Board packet tells us IVGID staff perform only 1,700 tests annually which generates approximately $105,000 of revenue. How come the difference? Because ¶16.03(D)(1) allows "inspections and tests (to)...be performed by...certified tester(s) approved by the District." And because third party testers charge *less* for inspecting and testing than IVGID, naturally, IVGID's water customers do their testing elsewhere.

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[38] See page 87 of the 2015/16 Budget (https://www.yourtahoeplace.com/uploads/pdf-ivgid/2015-2016_Budget_Book.pdf).

Given public utilities are not entitled to charge more than their actual costs to provide utility services, ***why does IVGID charge more for annual inspecting/testing of backflow prevention devices than the competition***? Is it another impermissible profit source because of staff's preying off helpless victims? Or, why does IVGID maintain staff and equipment to perform backflow prevention inspecting/testing if this work can be provided by the private sector for less? After all, our GM constantly mis-informs the Board and the public that IVGID staff are available to perform services such as these for less cost than comparable private sector sources. Either Mr. Pinkerton is mistaken, or IVGID is making an impermissible profit on the backflow prevention device inspections/testings it furnishes to its customers.

Thus either way, either IVGID should get out of the backflow prevention device inspecting/ testing business, or a rate study should be conducted by a qualified third party and its rates be reduced. If the private sector can do this job for less, then IVGID staff should be capable of doing the same thing for less.

Another Proposed Modification to Our New Water Rates/Charges; Designating Sewer CICs Assessed/Collected Expressly For the Effluent Export Pipeline Project, Phase II as Restricted Reserves: According to page 22 of the 1/23/2019 Board packet, "the effluent export project has been the major driver in raising...sewer rates (since) the district currently does not have sufficient reserves to fund this project." Staff tells us that "large sewer CIP rate increases occurred in 2011, 2012, 2013 and 2014 to raise the necessary capital funds for this project." In point of fact, in addition to other CIP components of past sewer rates' CICs[39], IVGID has assessed and is currently assessing water customers, $14,774,338[40] since 2010/11 ($2,000,000/year from 2012-2017 as well as 2018-19, and $1,000,000 for 2017-18[41]), supposedly as a CIP reserve to fund this $23,000,000 project[42]. Yet according to staff, $4,811,782 of these monies have been spent on this project[40]. *They have not*!

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[39] IVGID budgets *more*/year for water/sewer CIPs than simply the yearly reserve to fund the Effluent Export Pipeline Project, Phase II. For instance, for 2018/19 staff budgeted $4,913,000 in CIP revenue to fund a like amount of CIP expenses. This was broken down as follows: $685,674 in shared CIPs; $1,310,000 in water CIPs; $2,680,000 in sewer CIPs [see pages 1-2 of the 2018/19 CIP Budget (https://www.yourtahoeplace.com/uploads/pdf-ivgid/FY_18-19_5-year_CIP_Book_-_FINAL_5.23.18.pdf) - copies of these pages are attached as Exhibit "D" to this written statement] and presumably another $237,326 in grants given this number is "net of grants." This number was well in excess of the $2,000,000 budgeted just for the Effluent Export Pipeline Project, Phase II.

[40] See page 49 of the 1/23/2019 Board packet. A copy of this page is attached as Exhibit "E" to this written statement, and I have placed an asterisk next to the $14,774,338 number.

[41] See pages 17 of the 1/23/2019 Board packet, as well as page 32 of the 1/24/2018 Board packet. I have attached a copy of the latter page together with an asterisk next to the portion which evidences this factual information, as Exhibit "F" to this written statement.

[42] This figure is a pipedream. First of all, this is an "estimate of (only) *probable* construction costs" that was made nearly seven years ago, on May 30, 2012 (a copy of the estimate is attached as Exhibit "G"

Moreover, staff have admitted they intend to charge water users an additional $2,000,000/ year to fund the subject project, for at least the next four plus fiscal years[43].

Moreover still, ***what exactly is the Effluent Export Pipeline Project, Phase II***? In a different written statement I asked be attached to the minutes of the Board's regular December 12, 2018 meeting[44], I documented in writing "exactly what tasks are encompassed within Phase II of the Effluent Pipeline Project."[45] To repeat, "the proposed project...will *replace*...two remaining sections...a total length of approximately 6 miles...of 16-inch Export Pipeline." Moreover, now that we have a very detailed "estimate of probable construction (components and) cost(s)" for this project (see Exhibit "F" to this written statement), we know exactly the scope of work included. Given no portion of this 6 miles of pipeline has been replaced, ***none of the nearly $5,000,000 in past sewer charges staff have assigned to the Effluent Export Pipeline Project, Phase II[40], have been spent on any of this scope of work***! In other words, this money has been robbed to pay for other endeavors.

For all these reasons, the public needs the protection of formally restricting the expenditure of these funds for the Effluent Export Pipeline Project, Phase II, *as described*! In fact, I ask that all of these funds be deposited into a segregated special reserve fund for this purpose.

Doesn't the Board See a Problem With Administering the Public's Money Losing Recreational Facilities, While Granting Those Facilities Discriminatory Rate/Charge Preferences? It's a classic conflict of interest.

Unbelievably, Staff's Rate Survey is Chock Full of More Deceitful and Misrepresented Facts. So to Clear the Record,

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to this written statement), and as we all know construction costs have increased markedly since then. Second of all, this estimate does not include all of the costs associated with replacement of this segment of pipeline (for instance, design costs were not included inasmuch as this was only a "pre-design cost estimate"). When these additional costs are added onto the estimate, we're going to be looking at a far different number. Third of all, this estimate doesn't include the typical 10% add-on ($3,200,000) for "construction contingencies" (see page 6 of the 1/23/2019 Board packet for an example of what I am talking about). Fourth of all, staff has demonstrated that it does not know how to estimate accurately. The reader need only refer to item F(1) on this agenda for evidence of what I am talking about; an initial construction estimate of $85,000, and a request to appropriate $124,395 (a 46.35% shortfall) for construction of the project the subject thereof. Finally, now that our GM has revealed allocated staff costs are added to all CIPs, this project's total cost is guaranteed to be millions of dollars more. And the longer staff wait to commence construction, such as hoping for the pipedream of TTD funding (discussed hereafter), the higher the cost is going to rise.

[43] See page 44 of the 1/23/2019 Board packet.

[44] See pages 136-154 of the 1/23/2019 Board packet.

[45] See page 137 of the 1/23/2019 Board packet to be exact.

TTD Funding: At page 22 of the 1/23/2019 Board packet staff disingenuously hold out hope for a shared use bike path and IVGID's ability to relocate phase II of the effluent pipeline project underneath. But staff fail to share with the Board and the public that TTD's BUILD grant application was rejected on December 11, 2018. Not only is there no funding for TTD's bike path project via BUILD grants, but there is no funding elsewhere as well. Whatever financial savings there may have been under bike path relocation has been more than offset by intervening repair and increased construction costs. In other words, another staff pipe dream.

Program 595 Funding: At page 22 of the 1/23/2019 Board packet staff disingenuously hold out hope for section 595 funding to offset some of the $23 million in projected pipeline replacement costs. But this program has been dead for five or more years, and IVGID hasn't received a penny from the program during this period of time. This is the reason "the capital plan has been modified to show that *we receive no funding*." Although maybe in the future some similar program may come into existence which contributes towards the cost of replacing the balance of our effluent pipeline, today, it's another staff pipe dream.

Conclusion: Maybe most residents don't care about how IVGID staff repeatedly use propaganda tools to paint the picture they're so just, transparent and require their proposed water and sewer rate increases. Maybe they don't care about how IVGID has created disproportionate and preferential rates/exemptions for itself and its favored collaborators which are subsidized by the water/sewer rates paid by residential customers. But maybe some do care.

What I have attempted to demonstrate is that residential customers continue to subsidize staff's commercial money losing recreational business enterprises with their *ad valorem* taxes, BFFs and/or RFFs, and the user fees they are assessed to use the facilities they subsidize. But still that's not enough! Staff use hundreds of thousands of water/sewer customers' utility rates/charges to further subsidize those commercial money losing business enterprises.

And the next time an IVGID staff member thanks one of his/her 966 other IVGID colleagues[46], understand the real reasons why.

If the Board wants to make water/sewer rates just, reasonable, non-preferential, and non-discriminatory, then it needs to address the fundamentals of staff's rate model. When it does, I predict rates will go down for the residential customer, and IVGID's commercial business enterprises will begin paying their fair share for perhaps the very first time.

The AWWA Manual instructs that when it comes to public water/sewer rates, "a city's first duty is to its own inhabitants who...therefore have a preferred claim to the benefits resulting from public ownership."[47] If that's the case, how about making we residents priority number one, and IVGID's disproportionate use for its commercial recreational businesses second?

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[46] See https://transparentnevada.com/salaries/2017/incline-village-general-improvement-district/.

[47] See page 298 of the AWWA Manual.

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

EXHIBIT "A"

Request to Remove Agenda Item F(1)(b) [Review, Discuss and Possible Set Water/Sewer Rate Change Public Hearing] From Consent Calendar, and Permit Aaron Katz to Present Water/Sewer Rate Presentation at the Board's Next Meeting to Provide Factual Materials Staff Have Intentionally Omitted

From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>

To: Wong Kendra Trustee

Cc: Callicrate Tim Trustee <callicrate_trustee@ivgid.org>, Horan Phil <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>

Subject: Request to Remove Agenda Item F(1)(b) [Review, Discuss and Possible Set Water/Sewer Rate Change Public Hearing] From Consent Calendar, and Permit Aaron Katz to Present Water/Sewer Rate Presentation at the Board's Next Meeting to Provide Factual Materials Staff Have Intentionally Omitted

Date: Feb 6, 2019 2:14 PM

Dear Chairperson Wong and Other Honorable Members of the IVGID Board:

I ask item F(1)(b) on the Consent Calendar be transferred to the General Business Calendar. Here's why:

1. This item is described as "review, discuss and possibly set the date/time for a Public Hearing to consider proposed water/sewer rate increases. However, as staff know, there can be no discussion of items on the Consent Calendar. If there is to be a discussion, it must take place on the General Business Calendar.

2. Moreover, Policy No. 3.1.0.15 states that "any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting." Therefore it only takes one member of the Board.

3. Stated differently, Policy No. 3.1.0.15 states that "a unanimous affirmative vote shall be (required) as a favorable motion and approval of each individual item included on the Consent Calendar." Therefore it only takes one member of the Board to NOT vote in favor of this item being on the Consent Calendar.

4. Have any of you read the AWWA Manual on Principles of Water Rates and Charges upon which staff allegedly rely? Well I have, and I have some additional facts to present to the Board that Mr. Pomroy has been less that forthright in sharing. In other words, he has presented "cherry picked" facts which support his agenda.

5. Have any of you read the AWWA Manual on Principles of Sewer Rates and Charges ("the Manual")? Guess what? THERE IS NO SUCH MANUAL. I don't know upon what Mr. Pomroy relies to support his sewer rate study, but I suspect it's nothing other than his subjective justification.

6. And to add to the unfairness, staff is again ACTIVELY CONCEALING PUBLIC RECORDS which reveal the deficiencies in its rate structure. Without these records, how can the Board possibly understand these deficiencies. The Board needs to step in and force staff to share the truth with the public. Because right now, Mr. Pomroy DOES NOT SPEAK THE ENTIRE TRUTH.

7. As I shared with the Board at its last meeting, there are a number of structural deficiencies in the methodology relied upon by staff in support of its rate study. Mr. he Board and the public need to learn all the facts. And for this reason, I ask I be given the same opportunity to present those facts that Mr. Pomroy was given to cherry pick.

8. "Water rates are considered fair and equitable when each customer class pays the costs allocated to the class and...*cross-class subsidies* are avoided. While recovery of the full revenue requirement in a fair and equitable manner is a key objective of a utility using a cost-of-service rate making process, it is often not the only objective...Promoti(ng)...fairness in... apportion(ing)...total costs of service among the different rate payers" are also key objectives. So is "avoid(ing)...undue discrimination (subsidies) within...rates."[1].

9. As I pointed out in my written statement to the last meetings' minutes (see pages 459-467 of the Board packet), Diamond Peak uses over 1,500 times the water the median residential customer uses, just for snowmaking. Yet Diamond Peak is not assessed any excess water charges whereas about 120 residential customers are. This is manifestly unfair.

10. Notwithstanding Diamond Peak uses over 1,500 times the water the median residential customer uses, just for snowmaking, Yet it only pays 76.65 times the capital improvement costs the residential customer pays. Given the residential

customer doesn't need the water intrastructure Diamond Peak needs, and he/she actually uses a pittance of the water Diamond Peak does, just on snowmaking, staff's rate structure is manifestly unfair.

11. To eliminate the unfairness staff proposes, here is my list of proposed structural changes that staff don't even talk about:

I. **Eliminate Variable Water Charges Altogether Because it is Unfair to Charge Approximately 120 Residential Customers a Surcharge For Their Consumption of More Than 20,000 Gallons of Water in a Billing Period, Yet to *Not* Charge Commercial Customers the Same Surcharge When They Consume Many Times That Consumed by the Residential Customer;**

II. **Alternatively, Apply Variable Water Charges Uniformly to All Customer Classes at the Same Tier 1 and Tier 2 Rates Assessed Residential Customers;**

III. **Eliminate Defensible Space Charges Assigned to Customers' Water Bills as They Have Zero to Do With the Cost IVGID Incurs to Provide Water Services;**

IV. **Eliminate the Water Public Service Recreation Exemption Altogether Because it is an Unreasonable Preference Which Primarily Benefits IVGID – the Entity Which Adopts Rates;**

V. **Eliminate Variable Sewer Charges Altogether Because IVGID Has No Means of Measuring Any Customer's Discharge Into the Public's Sewer System;**

VI. **Create a New Customer Class (IVGID Recreational Venues) Which More Fairly Apportions the Public's Costs to This Class of Users;**

VII. **Increase Commercial Customer's Fixed Water/Sewer Charges Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters**; and,

VIII. **Increase Commercial Customer's Water/Sewer CICs Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters.**

12. The Manual makes clear that "a utility is presented with a major challenge when it sets out to select a rate structure that is responsive to the philosophy and objectives of both the utility and its community...The process of selecting the most appropriate rate structure for a particular utility and its customers *is not simple*. (Rather,) the selection is complex because there are so many types of rate structures...Even within a single utility, because of these objectives, each customer class may not use the same rate structure...For these reasons, a 'one size fits all' approach to rate structures may not be appropriate within a utility (like Incline Village/Crystal Bay) that has...diverse...usage patterns."[2] Only "when diverse and competing objectives are well understood and evaluated, (does) a utility ha(ve) the opportunity to design a rate structure that does more than simply recover its costs."[3]

13. I suspect few if any on the Board are sufficiently familiar with staffs' existing rate structure and how it is manifestly unfair. This is another reason why a formal public hearing should not be set and I should be given the opportunity to present facts Mr. Pomroy has intentionally chosen to omit.

14. "Beneficiaries of a service should pay for that service...(Thus) the level of service charges should be related to the cost of providing (that) service...services provided for the benefit of a specific individual, group, or business should not be paid from general utility revenues;"[4] and, "unjust or unreasonable discrimination...renders a rate or charge unreasonable."[5]

15. "Water rates are considered fair and equitable when each customer class pays the costs allocated to the class and... *cross-class subsidies* are avoided. While recovery of the full revenue requirement in a fair and equitable manner is a key objective of a utility using a cost-of-service rate making process, it is often not the only objective...Promoti(ng)...efficient resource use (and)...fairness in...apportion(ing)...total costs of service among the different rate payers" are also key objectives. So is "avoid(ing)...undue discrimination (subsidies) within...rates."[6]

16. "The ideal solution to developing rates for water utility customers is to assign cost responsibility to each individual customer served and to develop rates that reflect that cost. Unfortunately, it is neither economically practical nor often possible...(Notwithstanding,) the cost of providing service can reasonably be determined for groups or classes of customers that have similar water-use characteristics and for special customers having unusual or unique water-use or service requirements. *Rate making endeavors to assign costs to classes of customers in a nondiscriminatory, cost responsive manner so that rates can be designed to closely meet the cost of providing service to such customer classes.*"[7]

17. "It is common for water utilities to have three principal customer classes: (1) residential, (2) commercial, and (3) industrial...*Many systems...have customers with individual water-use characteristics, service requirements, or other factors that differentiate them from other customers with regard to cost responsibility. These customers should have a separate class designation.*"[8] "Irrigation is characterized by the relatively high demands it places on the water system...*Establishment of a separate class designation is warranted* when separate metering for...irrigation is available, as is often the case for...parks, fields, and golf courses...where such loads are significant in the system...The significant demands caused by irrigation can be recognized and reflected in the cost to provide this service."[9] Staff have not created a separate customer class for IVGID's recreational venues. And because those venues place a disproportionate demand on the public's water/sewer systems, they need to be treated differently.

18. "There is often the need to establish a minimum threshold or base level of cost or demand for service against which the costs or demands of larger customers can be measured. *A convenient and readily available parameter for this purpose is the size of the customer's water meter*...There are different methodologies for measuring or computing equivalent rations for larger meters as compared to a...standard base size meter as equivalent ratios. The two most commonly used ratios in the water rate-making industry are (1) equivalent meter-and-service cost ratios and (2) equivalent meter capacity ratios...Meter capacity ratios...are most often used when estimating potential capacity or demand requirements for customers on the basis of the size of the water meter. The determination of system development charges or impact fees for meters greater than the base size, where potential customer demand is assume to be proportional to meter size, is an example of the use of meter capacity ratios. Meter capacity ratios may also be appropriate in the design of the service charge portion of the general rate schedule when such charges include some recovery of fixed-capacity related costs or readiness-to-service related costs."[10] This is the type of rate methodology staff utilizes. It is called "Capacity Adjustment Factor" or "CAF."

19. "One of the disadvantages of the meter size approach is that for larger meters, the meter capacity may not be a reasonable indicator for the actual capacity use of the customer...Customer(s) with a larger connection size...may use far more capacity...Some utilities...provide for the ability to review capacity use of customers with larger connections after a specified period of time after which a baseline of historical usage has been established. With this review comes the opportunity to true-up (charges)...based on the baseline consumption data"[11]. IVGID's use of Equivalent Meter Capacity Ratios is manifestly unfair to single family residential customers in general, and IVGID's single family residential customers in particular (because 2/3 are vacation or second homeowners).

20. For all these reasons I ask a date not be set for a public hearing pertaining to changed water/sewer rates, and I be given the opportunity to present material facts omitted by staff.

Thank you for your cooperation. Aaron Katz

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[1] Page 4 of the Manual.
[2] Page 325 of the Manual.
[3] Page 91 of the Manual.
[4] Page 290 of the Manual.
[5] Page 296 of the Manual.
[6] Page 4 of the Manual.
[7] Page 75 of the Manual.
[8] Page 77 of the Manual.
[9] Page 76 of the Manual.
[10] Pages 323-324 of the Manual.
[11] Pages 274-275 of the Manual..

EXHIBIT "B"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

EXHIBIT A
Schedule of Water Service Charges

Monthly water charges are the summation of the following components:

1. Fixed Charge = $11.23 X CAF [1] X number of units.
2. Administrative / Customer Service Account Charge = $3.76 per account.
3. Capital Improvement Charge = $14.80 X CAF [1] X number of units
4. Variable Cost = $1.50 per 1,000 gallons of water use. [billed as water use charges]
5. Excess water charge[2]
    a. First Tier: Additional Cost = $0.93 per 1,000 gallons for all water use greater than 20,000 gallons X CAF[1] X number of units, in addition to the Variable Cost (#4), above.
    b. Second Tier: Additional Cost = $1.30 per 1,000 gallons for all water use greater than 60,000 gallons X CAF[1] X number of units, in addition to Variable Cost (#4) and First Tier Cost (#6a), above.
6. Defensible Space Fee = $1.05 X number of units.
    a. The defensible space fee is to pay 50% of the IVGID share of costs for fuels treatment on IVGID lands that will enhance the protective boundary from destructive wildfire that could threaten the communities of Incline Village and Crystal Bay. The other 50% share of this cost is paid by the IVGID Recreation Facility Fee.

[1] **Capacity Adjustment Factor:**

Service Size for Billing Purposes	CAF
All Residential Customers	1.0
¾"	1.0
1"	1.67
1.5"	3.33
2"	5.33
3"	10.00
4"	16.67
6"	33.33
8"	53.33
10"	76.65

[2] **Designated Public Service Recreation** irrigation accounts are not assessed excess water charges.

Typical monthly single-family residential water service charges with no metered water use:

Charge	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Water Base Rate (#1)	$9.50	$9.55	$9.74	$10.00	$10.65	$11.23
Capital Rate (#3)	13.28	13.69	13.96	14.36	14.47	14.80
Administrative Fee (#2)	3.20	3.25	3.35	3.45	3.65	3.76
Defensible Space (#6)	1.05	1.05	1.05	1.05	1.05	1.05
Total Water:	**$27.03**	**$27.54**	**$28.10**	**$28.86**	**$29.82**	**$30.84**

EXHIBIT "C"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

EXHIBIT A
Schedule of Sewer Service Charges

Monthly sewer charges are the summation of the following components:

1. Fixed Charge = $18.30 X CAF [(1)] X number of units.
2. Administrative / Customer Service Account Charge = $3.76 per account.
3. Capital Improvement Charge = $30.70 X CAF [(1)] X number of units.
4. Variable Cost [(2)] = $3.10 per 1,000 gallons of water use.[billed as sewer use charges]

[(1)] Capacity Adjustment Factor:

Service Size for Billing Purposes	CAF
All Residential Customers	1.0
¾"	1.0
1"	1.67
1.5"	3.33
2"	5.33
3"	10.00
4"	16.67
6"	33.33
8"	53.33
10"	76.65

[(2)] Residential Variable Cost:

Variable sewer costs for residential customers are based on monthly water use (see #4, above) as follows: During the non-irrigation months (December through April), the variable sewer cost is calculated using the metered water use value. During irrigation billing months (May through November), the variable sewer cost shall be the lesser of the metered water use value or the non-irrigation months' average metered water use. The non-irrigation months' average shall not be set at a value less than 3,000 gallons.

Typical monthly single-family residential sewer service charges with no metered water use:

CHARGE	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Base rate (#1)	$14.85	$15.20	$15.81	$16.52	$17.55	$18.30
Capital rate (#3)	23.80	27.68	28.79	29.86	$30.25	$30.70
Administrative fee (#2)	3.20	3.25	3.35	3.45	$3.65	$3.76
Total Sewer:	**$41.85**	**$46.13**	**$47.95**	**$49.83**	**$51.45**	**$52.76**

EXHIBIT "D"

Project Type		
A - Major Projects - New Initiatives	D - Capital Improvement - Existing Facilities	G - Equipment & Software
B - Major Projects - Existing Facilities	E - Capital Maintenance	
C - Capital Improvement - New Initiatives	F - Rolling Stock	

2018/2019 - 5 Year Project Summary Totals - FINAL 05/23/18

Division	Project Number	Project Title	2018 - 2019	2019 - 2020	2020 - 2021	2021 - 2022	2022 - 2023	Total	Project Type	Number of Projects
General Fund										
Accounting/Information Systems	1212OE1601	Check Writer Printer Replacement - 893 Southwood Administration Building	6,000	-	-	-	-	6,000	G	1
	1213CE1101	IT Master Plan - IT Security Devices	15,000	15,000	15,000	-	-	45,000	G	1
	1213CE1501	District Wi-fi Installation Update	-	60,000	-	-	-	60,000	G	1
	1213CE1701	District Communication Radios	6,000	6,000	6,000	10,000	-	28,000	G	1
	1213CO1505	IT Infrastructure	-	132,800	91,800	92,000	-	316,600	G	1
	1213CO1703	District Wide PC, Laptops, Peripheral Equipment and Desk Top Printers	82,750	87,600	99,950	105,200	104,200	479,700	G	1
	1213CO1801	Email Security Gateway	13,000	-	-	-	-	13,000	G	1
	1213LV1721	IS&T Pick-up Truck and Cargo Unit	-	-	-	-	12,000	12,000	F	1
	Total		122,750	301,400	212,750	207,200	116,200	960,300		8
General Government	1099BD1501	Admin Roof Replacement	-	62,300	-	-	-	62,300	E	1
	1099BD1502	Upgrade Public Bathrooms at Administration for ADA Compliance	-	-	-	75,000	-	75,000	D	1
	1099BD1701	Administration Services Building	-	-	-	-	150,000	150,000	B	1
	1099BD1803	Administration Fire Panel Replacement	18,000	-	-	-	-	18,000	E	1
	1099CO1802	Digital Records Management System	75,000	-	-	-	-	75,000	G	1
	1099FF1503	Replace Carpeting 893 Southwood Admin Building	51,500	-	-	-	-	51,500	E	1
	1099LI1705	Pavement Maintenance - Administration Building	5,000	5,000	5,000	5,000	5,000	25,000	E	1
	1099OE1401	Admin Printer Copier Replacement - 893 Southwood Administration Building	-	-	-	28,000	-	28,000	G	1
	1315CO1801	Human Resource Management and Payroll Processing Software	120,000	-	-	-	-	120,000	G	1
	Total		269,500	67,300	-	108,000	-	444,800		9
		Total General Fund	392,250	368,700	212,750	315,200	116,200	1,405,100		17
Utilities										
Public Works Shared	2097BD1202	Paint Interior Building #A	-	43,300	-	-	-	43,300	E	1
	2097BD1204	New Carpet Building #A	-	-	43,820	-	-	43,820	E	1
	2097BD1704	Replace Roof Public Works #B	-	-	-	105,000	-	105,000	E	1
	2097BD1802	Household Hazardous Waste Building Improvements	-	15,000	150,000	-	-	165,000	D	1
	2097CO2101	Public Works Billing Software Replacement	-	-	-	102,000	-	102,000	G	1
	2097DI1401	Adjust Utility Facilities in NDOT/Washoe County Right of Way	60,000	60,000	60,000	60,000	60,000	300,000	E	1
	2097HE1725	Loader Tire Chains	-	-	-	9,900	9,900	19,800	F	1
	2097HE1729	2002 Caterpillar 950G Loader #523	-	-	-	265,000	-	265,000	F	1
	2097HE1730	2002 Caterpillar 950G Loader #525	-	-	-	-	265,000	265,000	F	1
	2097HE1751	2013 Trackless Snowblower #687	-	-	-	-	160,000	160,000	F	1
	2097HE1752	2001 105KW Mobile Generator #313	-	-	-	-	50,000	50,000	F	1
	2097HV1732	2010 International Vactor Truck #638	430,000	-	-	-	-	430,000	F	1
	2097HV1754	1996 Peterbilt Dump Truck #299	-	75,000	-	-	-	75,000	F	1
	2097HV1755	2001 Peterbilt Bin Truck #468	-	-	-	190,000	-	190,000	F	1
	2097LE1720	Snowplow #300A	-	-	-	18,000	-	18,000	F	1
	2097LE1721	Snowplow #307A	-	-	-	-	18,000	18,000	F	1
	2097LE1722	Slurry Liquidator #326	-	-	-	41,000	-	41,000	F	1
	2097LE1724	2015 Sander/Spreader #710	-	20,000	-	-	-	20,000	F	1
	2097LI1401	Pavement Maintenance, Utility Facilities	12,500	105,000	239,000	12,500	12,500	381,500	E	1
	2097LI1701	Pavement Maintenance, Reservoir 3-1 WPS 4-2/5-1	-	-	10,000	165,000	-	175,000	E	1
	2097LV1733	2009 Chevrolet Mid Size Pick-up #630 Compliance Dept.	30,000	-	-	-	-	30,000	F	1
	2097LV1738	2009 Chevrolet 1/2 Ton Pick-up Truck #631	-	30,000	-	-	-	30,000	F	1
	2097LV1739	2009 Chevrolet 1/2 Ton Pick-up Truck #632 Engineering Dept.	-	30,000	-	-	-	30,000	F	1
	2097LV1740	2012 Extend-A-Cab Pick-up #678 Pipeline Dept.	-	-	-	-	32,000	32,000	F	1
	2097LV1744	2012 1-Ton Service Truck w/ Liftgate #668 Treatment	-	-	-	-	43,000	43,000	F	1
	2097LV1746	2004 GMC 1-Ton Flatbed #542 Pipeline Dept.	-	-	46,000	-	-	46,000	F	1
	2097LV1747	2008 Chevrolet Service Truck #609 Meter Truck	-	36,000	-	-	-	36,000	F	1
	2097LV1749	2011 Chevrolet Service Truck #647 Treatment	-	-	45,000	-	-	45,000	F	1
	2097SS1708	WRRF Crew Quarters	153,174	-	-	-	-	153,174	D	1
	Total		685,674	419,300	593,820	968,400	650,400	3,317,594		29
Water	2299DI1102	Water Pumping Station Improvements	115,000	85,000	50,000	50,000	50,000	350,000	E	1
	2299DI1103	Replace Commercial Water Meters, Vaults and Lids	40,000	40,000	40,000	40,000	40,000	200,000	E	1
	2299DI1204	Water Reservoir Coatings and Site Improvements	40,000	85,000	85,000	55,000	75,000	340,000	E	1
	2299DI1401	Burnt Cedar Water Disinfection Plant Improvements	100,000	75,000	25,000	25,000	25,000	250,000	E	1
	2299DI1701	Water Reservoir Safety and Security Improvements	200,000	-	-	-	-	200,000	D	1
	2299DI1702	Water Pump Station 2-1 Improvements	700,000	-	300,000	-	-	1,000,000	D	1
	2299DI1707	Burnt Cedar Water Disinfection Plant Emergency Generator Fuel Tank Upgrades	-	175,000	-	-	-	175,000	D	1

Project Type		
A - Major Projects - New Initiatives	D - Capital Improvement - Existing Facilities	G - Equipment & Software
B - Major Projects - Existing Facilities	E - Capital Maintenance	
C - Capital Improvement - New Initiatives	F - Rolling Stock	

2018/2019 - 5 Year Project Summary Totals - FINAL 05/23/18

Division	Project Number	Project Title	2018 - 2019	2019 - 2020	2020 - 2021	2021 - 2022	2022 - 2023	Total	Project Type	Number of Projects
	2299LV1720	2013 Mid Size Truck #675 Compliance	-	-	-	31,000	-	31,000	F	1
	2299WS1704	Watermain Replacement - Martis Peak Road	-	50,000	625,000	-	-	675,000	D	1
	2299WS1705	Watermain Replacement - Crystal Peak Road	-	-	-	50,000	845,000	895,000	D	1
	2299WS1706	Watermain Replacement - Rifle Pk Ct, Slott Pk Ct	-	-	50,000	325,000	-	375,000	D	1
	2299WS1801	Leak Study R2-1 14inch Steel	65,000	-	-	-	-	65,000	D	1
	2299WS1802	Watermain Replacement - Alder Avenue	50,000	465,000	-	-	-	515,000	D	1
	2299WS1804	R6-1 Tank Road Construction	-	5,000	15,000	110,000	-	130,000	D	1
	Total		1,310,000	980,000	1,390,000	686,000	1,035,000	5,201,000		14
Sewer	2523HE1721	2006 Kenworth T800 Bin truck #587	-	-	-	197,200	-	197,200	F	1
	2524SS1010	Effluent Export Line - Phase II	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	10,000,000	B	1
	2599BD1105	Building Upgrades Water Resource Recovery Facility	-	80,000	40,000	25,000	50,000	195,000	E	1
	2599BD1802	Treatment Plant Fire Panel Replacement	65,000	-	-	-	-	65,000	E	1
	2599DI1104	Sewer Pumping Station Improvements	55,000	50,000	30,000	30,000	30,000	195,000	E	1
	2599DI1703	Sewer Pump Station #1 Improvements	100,000	-	-	-	-	100,000	D	1
	2599SS1102	Water Resource Recovery Facility Improvements	120,000	75,000	75,000	75,000	75,000	420,000	E	1
	2599SS1103	Wetlands Effluent Disposal Facility Improvements	100,000	100,000	100,000	100,000	100,000	500,000	E	1
	2599SS1203	Replace & Reline Sewer Mains, Manholes and Appurtenances	80,000	80,000	55,000	160,000	55,000	430,000	E	1
	2599SS1702	WRRF Biosolids Bins	60,000	30,000	-	-	-	90,000	F	1
	2599SS1707	WRRF Aeration System Improvements	100,000	350,000	-	-	-	450,000	D	1
	2599SS2107	Update Camera Equipment	-	58,000	-	-	-	58,000	G	1
	Total		2,680,000	2,823,000	2,300,000	2,587,200	2,310,000	12,700,200		12
		Total Utilities	4,625,474	4,217,900	4,083,820	4,241,600	5,995,400	21,213,794		55
Internal Service Fleet	5190ME1201	Replacement Shop Tools and Equipment	-	-	-	-	16,000	16,000	G	1
	5197CO1801	Fleet Software upgrade - manages rolling stock/equip	-	14,000	-	-	-	14,000	G	1
	Total		-	14,000	-	-	16,000	30,000		2
Buildings	5394LE1723	2003 Genie Scissor Lift	-	15,000	-	-	-	15,000	F	1
	5394LE1724	2004 Equipment Trailer (Tilt)	-	5,100	-	-	-	5,100	F	1
	5394LV1720	Replace 2005 Service Truck 4X4 (1-ton) #555	-	-	-	43,600	-	43,600	F	1
	5394LV1722	Replace 2004 Pick-up Truck 4X4 (1/2-ton) #540	-	-	5,000	-	-	5,000	F	1
	Total		-	20,100	5,000	43,600	-	68,700		4
		Total Internal Service	-	34,100	5,000	43,600	16,000	98,700		6
Community Services Championship Golf	3141BD1703	Demolition of #10 Starter Shack	10,000	-	-	-	-	10,000	D	1
	3141BD1706	Venue Signage Enhancement	20,000	40,000	-	-	-	60,000	C	1
	3141FF1804	Champ Golf Exterior Icemaker Replacement	7,500	-	10,500	-	-	18,000	G	1
	3141GC1103	Irrigation Improvements	25,000	30,000	15,000	26,000	15,000	111,000	E	1
	3141GC1202	Championship Course Bunkers	10,000	-	-	-	-	10,000	E	1
	3141GC1501	Maintenance Building Drainage, Washpad and Pavement Improvements	-	30,000	700,000	-	-	730,000	D	1
	3141GC1802	Championship Course Greens and Surrounds	15,000	15,000	-	-	325,000	355,000	E	1
	3141GC1803	Championship Course Tees	13,000	13,000	-	-	-	26,000	E	1
	3141LI1201	Pavement Maintenance of Parking Lots - Champ Course & Chateau	25,000	17,500	52,500	45,000	10,000	150,000	E	1
	3141LI1202	Pavement Maintenance of Cart Paths - Champ Course	55,000	60,000	62,500	55,000	55,000	287,500	E	1
	3142LE1720	1999 Ty-Crop Spreader #429	36,400	-	-	-	-	36,400	F	1
	3142LE1733	2005 Carryall Club Car #564	-	11,000	-	-	-	11,000	F	1
	3142LE1734	2005 Carryall Club Car #565	-	11,000	-	-	-	11,000	F	1
	3142LE1735	2005 Carryall Club Car #566	-	11,000	-	-	-	11,000	F	1
	3142LE1736	2005 Carryall Club Car #567	-	11,000	-	-	-	11,000	F	1
	3142LE1737	2006 Carryall Club Car #589	-	-	11,000	-	-	11,000	F	1
	3142LE1738	2006 Carryall Club Car #590	-	-	11,000	-	-	11,000	F	1
	3142LE1739	2006 Carryall Club Car #591	-	-	11,000	-	-	11,000	F	1
	3142LE1740	2007 Club Car Carryall Ball Picker #600	25,000	-	-	-	-	25,000	F	1
	3142LE1741	2016 Bar Cart #724	-	-	29,000	-	-	29,000	F	1
	3142LE1742	2016 Bar Cart #725	-	-	29,000	-	-	29,000	F	1
	3142LE1746	2012 JD 8500 Fairway Mower #670	-	-	58,000	-	-	58,000	F	1
	3142LE1747	2011 Toro Groundsmaster 4000D #650	-	-	50,000	-	-	50,000	F	1
	3142LE1748	2015 Toro Greensmaster 1600 #711	-	-	-	-	10,000	10,000	F	1
	3142LE1749	2015 Toro Greensmaster 1600 #712	-	-	-	-	10,000	10,000	F	1
	3142LE1750	2013 JD 3235 Fairway Mower #685	-	-	-	60,300	-	60,300	F	1
	3142LE1753	2011 Toro Greensmaster 1000 #652	14,500	-	-	-	-	14,500	F	1

EXHIBIT "E"

Capital Revenues and Expenses

The capital revenue is the summation of monthly capital fees collected in the utility rates, connection fees, and interest income and increases by approximately 1.1% per year averaged over 5 years.

The capital expense is the capital improvement projects net of grants. This is the current five-year capital plan that is being developed as part of the budget process. The five-year capital expenses and revenues are presented in the following table.

5-Year Plan	2018-19	2019-20	2020-21	2021-22	2022-23	5-Yr Sum
Capital Revenue	4,913,000	4,960,000	5,014,000	5,073,000	5,133,000	25,093,000
Capital Expense	(4,786,000)	(4,881,000)	(4,736,000)	(4,424,000)	(4,715,000)	(23,542,000)
					Subtotal	**$1,551,000**

It is important to remember that the capital expenses are budget estimates with further refinement to occur in the CIP budgeting process. The goal of the rate study is to collect sufficient revenues to fund capital expenses over the following five years.

For the 2012-13 through the 2016-17 budget year, the District accumulated $2,000,000 per year in savings for the construction of the Effluent Export Project. In 2017-18 the District accumulated $1 million while work was performed on necessary sewer pumping station work. In 2018-19 the District will begin accumulating $2 million annually for the project. The Effluent Export Project is an on-going project with planning, design and construction costs that have occurred every year since the Phase II project began in 2010-11.

Summary

The proposed utility rate increase is to raise water rates by 3.4% and sewer rates by 2.7% for a total utility rate increase of 3.0%. The rates are currently scheduled

Export Pipeline Phase II

	Annual CIP Expenses	Cumulative CIP Expenses	Annual CIP Revenue	Project Balance	Sewer Rate Increase
2010-11 Fiscal Year	$21,250	$21,250	$400,000	$378,750	3.9%
2011-12 Fiscal Year	$330,827	$352,077	$750,000	$797,923	9.4%
2012-13 Fiscal Year	$111,663	$463,740	$2,000,000	$2,686,260	9.9%
2013-14 Fiscal Year	$59,424	$523,164	$2,624,338	$5,251,174	11.1%
2014-15 Fiscal Year	$744,805	$1,267,969	$2,000,000	$6,506,369	9.1%
2015-16 Fiscal Year	$606,318	$1,874,287	$2,000,000	$7,900,051	4.0%
2016-17 Fiscal Year	$494,331	$2,368,618	$2,000,000	$9,405,720	3.8%
2017-18 Fiscal Year	$1,743,164	$4,111,782	$1,000,000	$8,662,556	3.3%
2018-19 Fiscal Year	*$700,000*	$4,811,782	*$2,000,000*	$10,056,602	4.0%
	$4,811,782		$14,774,338		

EXHIBIT "F"

EXHIBIT "G"

Job No. 00115-156363

Computation

Project	IVGID Export Pipeline Project, Phase II	*Computed*	HDR
Subject	Estimate of Probable Construction Cost - 16 inch Effluent Pipeline	*Date*	5/30/2012
Task	PreDesign Cost Estimate - Singe Bid	*Reviewed*	IVGID
Start	2021 construction start with assumed 4% escalation	*Date*	6/4/2012

	QUANTITY	UNITS	UNIT PRICE	TOTAL COST
DIVISION 1 - GENERAL REQUIREMENTS				
Mobilization and Demobilization (10%)	1	LS	$1,311,829	$1,311,829
Insurance and Bonds (3%)	1	LS	$393,549	$393,549
SUBTOTAL				$1,705,377
DIVISION 2 - SITE WORK				
Mitigation and Environmental Controls	1	LS	$250,000	$250,000
Asphalt Cutting	59,400	LF	$3.95	$234,499
Repaving - Trench Section	178,200	SF	$5.26	$937,996
Asphalt Overlay (1 inch open-graded) and Rotomill	356,400	SF	$1.32	$468,998
Asphalt Stripping	59,400	LF	$0.99	$58,625
Excavation (Soil)	21,945	CY	$32.90	$721,953
Excavation (Rocks)	1,155	CY	$789.56	$911,941
Hauling and Disposal (Soil and Rocks)	14,135	CY	$23.69	$334,813
Shoring	29,700	LF	$10.53	$312,665
Backfill and Compaction (Intermediate)	8,965	CY	$59.22	$530,880
Backfill and Compaction (Initial Backfill)	4,619	CY	$59.22	$273,498
Bedding Material	1,100	CY	$59.22	$65,139
Aggregate Base	3,300	CY	$59.22	$195,416
Grout Existing Effluent Pipeline	1,816	CY	$296.08	$537,817
Traffic Control	1	LS	$200,000.00	$200,000
Blow off Valves (installation and Miscell.)	5	EACH	$986.95	$4,935
AVRV manholes	11	EACH	$3,947.80	$43,426
SUBTOTAL				$6,082,599
DIVISION 3 - CONCRETE				
Concrete Pipe Cover	1,650	CY	$263.19	$434,257
SUBTOTAL				$434,257
DIVISION 15 - MECHANICAL				
PIPES				
8 inch DI (Blowoff)	75	LF	$105.27	$7,896
2 inch HDPE pipe	176	LF	$6.58	$1,158
16-inch DIP Pipe	29,700	LF	$210.55	$6,253,308
FITTINGS				
DIP Fittings (Assume 3% of Pipe Cost)	1	LS	$188,000	$188,000
VALVES				
2 inch AVRV	11	EACH	$2,631.86	$28,950
2 inch Gate Valve	11	EACH	$197.39	$2,171
8 inch Gate Valve (Blowoff)	5	EACH	$1,315.93	$6,580
16 inch Butterfly Valves	2	EACH	$5,263.73	$10,527
Valve Boxes (Blowoff)	10	EACH	$657.97	$6,580
Valve Extension Rod and Casing (Blowoff)	5	EACH	$986.95	$4,935
Tie-in	2	EACH	$6,579.66	$13,159
Pipeline Pressure Testing	29,700	LF	$2.63	$78,166
SUBTOTAL				$6,601,430
				$14,823,664
Subtotal 1 (Division Total)				$1,185,893
Contractor Overhead and Profit (8% of Subtotal 1)				$16,009,557
Subtotal 2				$3,201,911
Construction Contingencies (20% of Subtotal 2)				$1,280,765
Design (8% of Subtotal 2)				$1,280,765
Administrative Costs (8% of Subtotal 2)				$1,280,765
Construction Management (8% of Subtotal 2)				$23,053,763
Subtotal 3				
TOTAL ESTIMATED PROJECT COST				$23,053,763

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM G(4) – JUDICIAL REVIEW OF THE OFFICE OF ATTORNEY GENERAL'S ("OAG'S") FINDINGS AND CONCLUSIONS IN FILE NO. 13897-257 FINDING AN OPEN MEETING LAW ("OML") VIOLATION

Introduction: On January 17, 2019 the OAG issued its Findings of Fact and Conclusions of Law ("findings and conclusions") in File No. 13897-257 determining that the IVGID Board had committed an OML violation[1], pursuant to the authority of NRS 241.0395(1). Notwithstanding staff and attorney Guinasso admit that "the OAG's Findings of Fact and Conclusions of Law are academic and do not penalize IVGID in any way,"[2] they are seeking approval to "initiat(e)...a lawsuit" challenging the findings and conclusions at a cost "not (to) exceed $5,000."[3] Because this would be an incredible waste of taxpayer funds, and may not even be a permissible type of legal proceeding, I object. And that's the purpose of this written statement.

What is it Staff and Attorney Guinasso Intend to Accomplish by Filing the Proposed Lawsuit? Given the findings and conclusions are "academic and do not penalize IVGID in any way," what exactly do GM Pinkerton and attorney Guinasso intend to accomplish by challenging those findings and conclusions? What is the public interest? Whatever the answer, how can it possibly be worth the expenditure of $5,000 of taxpayer monies?

Since Chairperson Wong has announced she likes to "keep score" of OML complaints and their resolution, is the purpose of a lawsuit to enhance IVGID's winning percentage? What about protecting attorney Guinasso from claims of malpractice given his actions are at the heart of this OML violation? What about protecting attorney Guinasso from an abuse of process lawsuit by local citizen Kevin Lyons' Governance Sciences Group, Inc. ("GSGI") since it was compelled to respond to a lawsuit staff had no authority to initiate? Is IVGID so flush with cash it can throw away taxpayer funds on endeavors such as these as opposed to reducing the Beach ("BFF") and/or Recreation ("RFF") Facility Fee by a like amount?

IVGID Does Not Have Legal Grounds Upon Which to Initiate a Lawsuit Seeking to Set Aside the OAG's Findings and Conclusions: Take a close look at NRS 241. Although NRS 241.039(2) compels the OAG to "investigate and prosecute any (OML) violation of this chapter," and NRS 241.0395(1) allows the OAG to "make...findings of fact and conclusions of law that a public body has taken action in violation of any provision of...chapter" NRS 241 and compel a "public body (to)...include an item on (its) next agenda...which acknowledges th(os)e findings of fact and conclusions of law," *nowhere* is the

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[1] See pages 217-225 of the packet of materials prepared by staff in anticipation of the Board's February 6, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_2-6-19.pdf ("the 2/6/2019 Board packet")].

[2] See page 210 of the 2/6/2019 Board packet.

[3] See page 215 of the 2/6/2019 Board packet.

public body given standing to judicially challenge the OAG's actions. So upon what bases may IVGID initiate a new lawsuit against the OAG? And why hasn't attorney Guinasso shared this authority with the Board?

The OAG's Findings and Conclusions Do Not Deny Any Person Any Right: Although the OAG could have "sue(d) in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of th(at) chapter" [see NRS 241.037(1)], and/or "brought...a civil action...(to) recover...a civil penalty in an amount not to exceed $500...(against) each member of (the Board)...who attend(ed) a meeting...where action (wa)s taken in violation of any provision of th(a) chapter...who participate(d) in such action with knowledge of the violation" [see NRS 241.040(4)], here *no such suit nor civil action was brought.*

Consequently, IVGID Lacks Standing to File Suit: Although NRS 241.037(2) states that "any person *denied a right conferred by this chapter* may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides," such suit is pre-conditioned upon some denial of right. Given here there was no such denial, IVGID lacks standing to bring suit under NRS 241.037(2).

Moreover, the type of suit such a person may bring is limited under NRS 241.037(2) to:

1. "Seek(ing) to have an action taken by the public body declared void...requir(ing) compliance with or prevent violations of this chapter;" or,

2. "Determin(ing) the applicability of...chapter (NRS 241) to discussions or decisions of the public body."

Since here the OAG's findings and conclusions declared no action taken by the IVGID Board to be void, nor did they compel some "compliance...with...chapter" NRS 241, nor did they seek "to... prevent (future) violations of...chapter" NRS 241, nor did they "determine the applicability of...chapter (NRS 241) to discussions or decisions of" IVGID, IVGID lacks standing to bring the type of suit which can be brought under NRS 241.037(2).

These stark facts may be prejudicial to IVGID staffs' position but when a statute like this is clear and unambiguous, *Stubbs v. Strickland*, 129 Nev. 146, 297 P.3d 641 (2013) instructs that *its plain language means what it says*.

The Type of Suit Attorney Guinasso Wants to Bring, is One That Sets Asides the OAG's Findings and Conclusions: Here pages 5-7 of attorney Guinasso's memorandum[4] details all the reasons why the OAG's findings and conclusions were wrong: i.e., that: they were "untimely;" they were "not supported by substantial evidence;" "the OAG (made)...findings and conclusions on an issue that was not presented to the OAG;" "the holding in (*Comm'n on Ethics v.*) *Hansen*[, 133 Nev.

[4] See pages 213-215 of the 2/6/2019 Board packet.

Adv. Op. 39, 396 P.3d 807, 809-10 (2017)] does not apply;" "the...OML does not apply;" and, since the controversy was the subject of IVGID's lawsuit against GSGI, that court's decisions collaterally estop the OAG from making the findings and conclusions it did. In other words, IVGID seeks to set aside the OAG's findings and conclusions.

But Had the Legislature Intended That Public Bodies Can Seek to Set Aside the OAG's OML Findings and Conclusions, it Certainly Knew How to Enact a NRS That Grants Such Jurisdiction: Consider NRS 281A.710(1). There similar to the OML, the Nevada Ethics Commission ("NEC") has the jurisdiction to "render an opinion that interprets the statutory ethical standards and applies those standards to a given set of facts and circumstances regarding the propriety of the conduct of a public officer or employee." And similar to the OML, where the NEC renders such an opinion, NRS 281A.765(1) requires the issuance of *findings of fact and conclusions of law*. But unlike the OML, where the NEC "renders an opinion in proceedings concerning an ethics complaint," NRS 281A.785(3) holds that such "action...is a final decision for the purposes of *judicial review* pursuant to NRS 233B.130[5]."

Because the Legislature Has Provided For the Setting Aside of NEC Ethics Opinions, Yet it Hasn't Insofar as OAG OML Opinions, the Legislature Expressly Intended That the Possible Setting Aside of OAG OML Opinions *Not* be Capable of Judicial Review: Stated in legal terms, this doctrine is called *expressio unius est exclusio alterius* and it declares:

> "To express one thing is to *exclude* another. This maxim reflects a form of reasoning that is widespread and important in interpretation...the *a contrario* argument... (i.e. the) negative implication (or)...implied exclusion. An implied exclusion argument lies whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation, it would have *referred to that thing expressly*. Because of this expectation, the Legislature's failure to mention 'the thing' becomes grounds for inferring that *it was deliberately excluded.* Although there is no express exclusion, *exclusion is implied*."[6]

Thus "whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation it would have *referred to that thing expressly*...(its) failure to mention the thing becomes grounds for inferring that *it was deliberately excluded*."[6]

Conclusion: one of my written statements attempts to identify one or more problems with the powers IVGID exercises, and every one includes a detailed discussion about the problem(s), how we got there, and what I view is required to remedy them. And here I have provided yet another

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[5] NRS 233B.130(1) declares that "any party who is...a party of record...in an administrative proceeding ...by an agency...and (is) aggrieved by a final decision in a contested case is entitled to judicial review of the decision."

[6] See http://www.duhaime.org/LegalDictionary/E/ExpressioUniusEstExclusioAlterius.aspx.

example. Here the Board and the public are seeing the "IVGID culture" in its full, arrogant mode. Blaming everyone else for its staffs'/attorney's inappropriate actions rather than accepting blame, and using public funds to perpetuate a wasteful endeavor that accomplishes no public benefit.

Board members can stick their collective heads in the sand and deny there are problems (because you can "bring a horse to water, but you can't make him drink"). Or they can defer to the biased responses from a less than forthright staff and attorney *who are part of the problem*. Or they can look for ways to attack and marginalize critics like me who are nothing more than messengers, making us the focus of attention rather than the issues we have identified. Or they can just do the right thing; start taking control over the District's business and taking away the powers they have abdicated away to staff!

And by the way, to those asking where your RFF/BFF are spent, now you have another example and it's certainly *not* facilities for recreation.

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

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM C – PUBLIC COMMENTS – MORE EVIDENCE THE ADVICE GIVEN TO THE BOARD BY ITS STAFF AND ATTORNEY ARE FLAWED – HERE LOBBYING TO INFLUENCE LEGISLATION

Introduction: When one takes a step backwards and looks at the unilateral authority the Board has given to unelected staff and its attorney, it makes one ask the question "why the need for a Board?" The public didn't vote for Board Trustees so they could abdicate their responsibilities to un-elected staff. Yet under Chairperson Wong's tenure, that's exactly what has happened. And at the Board's January 23, 2019 meeting, front and center, was evidence of the Board's inappropriate conduct. And that's the purpose of this written statement.

Policy No. 3.1.0[1]: was amended effective April 25, 2018. Over the public's objections, Policy 3.1.0.17 was amended to give the GM the authority to adopt positions on proposed State legislation *on the Board's behalf* in the event the Board didn't call a special meeting or agendize an item at a regularly scheduled meeting for purposes of taking a position on legislation for which such position must be deemed established[2].

Notwithstanding, IVGID Has No Power to Lobby For/Against State Legislation: We've had this discussion before[3]. According to the Legislative Counsel Bureau, "the purpose of...general improvement districts ("GIDs") is to provide municipal-type services to an area which needs them, but which may not need (n)or want the full range of services implied by incorporation. (Thus) GIDs are most effectively used where it will be necessary to carry out ongoing operation and maintenance of a (particular) facility or service." Given GIDs are creatures of County Boards of Commissioners ["County Boards" {see NRS 318.015(1) and 318.075(1)}], the *only* "basic powers" they may exercise[4] are those *expressly included* in their initiating [NRS 318.055(4)(b)] or supplemental (NRS 318.077) ordinance(s)

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[1] This is a policy which according to its title, purportedly addresses "Conduct Meetings of the Board of Trustees" meetings rather than influencing State legislation.

[2] Policy No. 3.1.0 can be viewed at pages 8-13 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf. I have attached page 13, and section 0.17 in particular, as Exhibit "A" to this written statement.

[3] Go to pages 154- of the packet of materials prepared by staff in anticipation of the Board's May 10, 2017 meeting ["the 5/10/2017 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-10-17.pdf)].

[4] Since "*all* of such statutes...constitute a grant of power to certain boards and governing bodies, and (they) are a deprivation of powers and privileges in respect to the individuals residing within the affected areas...*(they)...must...be strictly construed, to include no more than (the) Legislature clearly intended*" [see A.G.O. No. 63-61, p. 103 (August 12, 1963)].

with the *proviso* they must be "one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter designated therein."

NRS 318.116 Does Not Recognize the Power to Create Laws Nor to Influence State Legislation as a Legitimate GID Basic Power: Don't believe me? Take a look for yourself[5]! Even if such a power were recognized, since there is no question IVGID has never been granted this power by the County Board, for IVGID *it does not exist*.

Dillon's Rule: Moreover, since "Nevada is considered a state without home rule...(local) governments generally have *only* those powers that are (expressly) granted to them by the Legislature...(because) without home rule, the general application of 'Dillon's Rule' *limits* the powers of counties, cities...towns" and here, IVGID. In other words,

> "[A] municipal corporation[6] possesses and can exercise the following powers *and no others*: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—*not simply convenient, but indispensable*."[7]

IVGID's Creation: IVGID was created on May 20, 1961 as a "body corporate and politic and a quasi-municipal corporation" [NRS 318.075(1)] pursuant to Washoe County Board Bill No. 57, Ordinance 97. Its initial basic powers were expressly *limited* to: 1) grading, re-grading, surfacing and resurfacing Incline Village streets, alleys and public highways; 2) constructing, reconstructing and improving Incline Village streets with curbs, gutters, drains, catch basins and sidewalks; 3) constructing, reconstructing, replacing or extending storm, sewer and other drainage; 4) constructing, reconstructing, improving, extending or bettering Incline Village's sanitary sewer system; and, 5) acquiring, constructing, reconstructing, improving, extending or bettering facilities for the supply, storage and distribution of water.

In other words, *IVGID was created to be nothing more than a public utility district*. And it was not created to lobby to influence legislation.

IVGID's Assumption of Additional Powers Based Upon Their Alleged Incidence, Necessity and/or Implication: IVGID staff will likely argue IVGID has the power to furnish facilities and services for *all* questionable purposes whether or not necessary to furnish public recreation or utility facilities because of NRS 318.210 which gives the Board the power to "exercise all rights and powers necessary

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[5] Go to https://www.leg.state.nv.us/nrs/NRS-318.html#NRS318Sec116.

[6] GIDs are quasi-*municipal* corporations [NRS 318.015(1) and 318.075(1)].

[7] See page 5 of that April 2014 Legislative Counsel Bureau Research Division Policy and Program Report on State and Local Government (http://www.leg.state.nv.us/Division/Research/Publications/PandPReport/19-SLG.pdf).

or incidental to or implied from the specific powers granted in...chapter" NRS 318. I disagree for at least two reasons. First, because of *Dillon's Rule* (discussed above). And second, because of the doctrine of *expressio unius est exclusio alterius* which in lay person's terms declares that:

> "To express one thing is to *exclude* another. This maxim reflects a form of reasoning that is widespread and important in interpretation...the *a contrario* argument... (i.e. the) negative implication (or)...implied exclusion. An implied exclusion argument lies whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation, it would have *referred to that thing expressly*. Because of this expectation, the Legislature's failure to mention 'the thing' becomes grounds for inferring that *it was deliberately excluded.* Although there is no express exclusion, *exclusion is implied*."[8]

Thus "whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation it would have *referred to that thing expressly*...(its) failure to mention the thing becomes grounds for inferring that *it was deliberately excluded*."[8]

Notwithstanding, the Board Approved Entrance Into a Contract With Tri-Strategies[9] For State Legislative Advocacy Services[10] at its December 12, 2018 Meeting: "What we are paying for is getting to know the (State) legislative team, tracking bills, acting on our behalf *when some wild cards make statements*, and dodging some bullets."[11] In other words, stifling the views of local citizens critical of IVGID labeled as "wild cards," and perpetuating IVGID's propaganda spin. And as justification, GM Pinkerton asserts that "we are the largest entity that doesn't have regular (legislative advocacy) coverage[12] but...did, in the past, up until 2013."[13]

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[8] See http://www.duhaime.org/LegalDictionary/E/ExpressioUniusEstExclusioAlterius.aspx.

[9] See pages 96-100 of the packet of materials prepared by staff in anticipation of the Board's January 23, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-23-19.pdf ("the 1/23/2019 Board packet")].

[10] See agenda item E(7) at pages 168-172 of the packet of materials prepared by staff in anticipation of the Board's December 12, 2018 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_12-12-18.pdf ("the 12/12/2018 Board packet")].

[11] See page 97 of the 1/23/2019 Board packet.

[12] And the *only* one of the 89 or more GIDs in the State!

[13] See page 98 of the 1/23/2019 Board packet.

How Much Are We Paying for Legislative Advocacy Services and Where Has it Been Budgeted? The answer to the first question is simple; a whopping $30,000 in fees plus travel and other "job related" expenses[14].

The answer to the second question is more interesting. According to GM Pinkerton, $24,000 was appropriated in the 2018 budget, and the remaining $6,000 comes from "the General Fund, Professional Consultants." I direct the reader to the 2018-19 budget[15]. I defy any Board member or anyone else for that matter to show me where in that budget $24,000 was appropriated for Legislative Advocacy. I have made an express public records request for these records[16], and I predict that none will be made available for my examination *because I do not believe they exist.*

Which raises another material question: when the 2018-19 budget was approved, did any Board member know that $24,000 had been appropriated for Legislative Advocacy? Assuming the answer to be "no," what other "vital" hidden appropriations were not shared with the Board and the public? Or more bothersome, have staff "puffed" the budget with all sorts of unnecessary and undisclosed expenditures so that when something like consulting or legislative advocacy comes along, there's a pocket from which the funds can be spent?

To make my point, let's continue the discussion. Did the Board know that "professional consultants" is an appropriated expenditure under the General Fund? I didn't. So I went back into the budget and retrieved Schedule B-10 at Page 19 of Form 4404LGF filed with the State Department of Taxation[17]. Nowhere do I see an appropriated expense entry for "professional consultants." Do you? Now maybe it's buried somewhere in these numbers and no one other than Gerry Eick knows where. But maybe it isn't. ***Maybe GM Pinkerton has fabricated this fact the same way he has fabricated the notion that engineering staffing costs are allocated to and added on top of all capital improvement project ("CIP") expenditures***. Given our staff's track record for truthfulness and transparency, which do you think?

It now appears we can't trust anything in the budget staff proposes because they fail to disclosed to the Board and the packet exactly what's included, and what's actually necessary.

The Board's January 23, 2019 Meeting: Agenda item E at that meeting consisted of a verbal legislative update from the lobbyist the Board improperly contracted with[18], Tri-Strategies[19]. Since

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[14] See page 172 of the 12/12/2018 Board packet.

[15] Go to https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Annual_Budget_FY2018-19.pdf.

[16] A copy of this records request is attached as Exhibit "B" to this written statement.

[17] This page comes from page 25 of the 2018-19 budget, and a copy is attached as Exhibit "C" to this written statement.

[18] Improperly, because lobbying to influence State legislation is not a basic power IVGID may exercise.

[19] The agenda for that meeting can be viewed at pages 1-3 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-23-19.pdf.

IVGID livestreams its Board meetings, Tri-Strategies' presentation can easily be viewed at 12:38-25:12 at https://livestream.com/IVGID/events/8537200/videos/186265786 ("the 1/23/2019 livestream"). There Victor Salcido, a partner in Tri Strategies, gave the following testimony and responded to the following question(s)/comment(s) at 21:00-24:00 of the livestream:

Mr. Salcido: "We represent you as a Board as a whole, and so...we will be taking direction from you (as a Board) on particular bills. As they are introduced we will...present them to you, get direction from you, and go from there. Happy to take any questions at this point.

Trustee Morris: Quick question...I can imagine, but I don't know...potentially a bill could come ...and require some quick...action...by us and it could fall outside of our meeting schedule. What happens then?

Mr. Salcido: (Although) we report through the general manager...But again, I want to be very clear about this point...we don't take action in one direction or another on a particular bill *absent direction from you...speaking as one Board*...In the scenario you painted which is we've got to make a quick decision...when it comes to...big items like advocating for or against a particular bill, *we would take direction from you (the Board) exclusively*...If (a bill) possible affects GIDs, then we would go through you (the Board) for direction...

Trustee Horan: I think Victor has made it very clear he's not going to be doing anything unless he has direction from the Board.

Mr. Salcido: That is correct."

In other words, ***IVGID's GM has no authority to adopt a position on a proposed bill before the State Legislature on the IVGID Board's behalf***!

So Why Was Policy No. 3.1.0 Amended to Ratify the Contrary Authority? How can the Board and the public accept the advice of a staff and attorney who assert it is appropriate for the Board to abdicate legislative advocacy to un-elected staff, when Mr. Salcido has made it so clear that this is inappropriate? And if staff's and our attorney's advice on this subject is wrong, doesn't that fact suggest it may very well be wrong on a whole slew of matters?

And Does the Board Now Intend to Rescind its Amendment to Policy No. 3.1.0.17 So it Comports With What Our Legislative Advocate Has Instructed? I formally ask tforhat this item be agendized for the next Board meeting.

Conclusion: Every one of my written statements attempts to identify one or more problems with the powers IVGID exercises, and every one includes a detailed discussion about the problem(s), how we got there, and what I view is required to remedy them. And here I have provided yet another example. *Dillion's Rule* states that if there be any doubt as to whether a local government may legitimately exercise a power, that doubt is to be resolved *against the exercise of that power.* Although I do not believe there to be any doubt, assuming *arguendo* there is, whether it is appropriate for un-elected staff to lobby the Legislature for/against proposed legislation on the

Board's behalf must be resolved *against IVGID*. I urge the Board to stop staff from wasting local property owners' Recreation ("the RFF") and Beach ("the BFF") Facility Fees on "pie-in-the-sky" endeavors such as these it has no power to pursue.

Board members can stick their collective heads in the sand and deny there are problems (because you can "bring a horse to water, but you can't make him drink"). Or they can defer to the biased responses from a less than forthright staff and attorney *who are part of the problem*. Or they can look for ways to attack and marginalize critics like me who are nothing more than messengers, making us the focus of attention rather than the issues we have identified. Or they can just do the right thing; recognize IVGID for the limited purpose local government it is, and start acting like one!

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

EXHIBIT "A"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

Conduct Meetings of the Board of Trustees
Policy 3.1.0

A unanimous affirmative vote shall be recorded as a favorable motion and approval of each individual item included on the Consent Calendar.

0.16 Advisory Committees. SECTION OMITTED

0.17 Legislative Matters. The General Manager may from time to time propose positions on legislative issues, which positions shall be reviewed and approved by the Board at its regular meeting. In the event a position on a legislative issue must be established prior to the next regular Board meeting, the General Manager is hereby authorized to adopt a position on IVGID's behalf.

0.18 Conflict Resolution. In the event that the provisions of Policy 3.1.0 conflict with any other Policy Provisions, this section shall prevail.

EXHIBIT "B"

Records Request - Where in the Budget Was Legislative Advocacy Appropriated

From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>
To: Herron Susan
Subject: Records Request - Where in the Budget Was Legislative Advocacy Appropriated
Date: Feb 4, 2019 2:46 PM

Hello Ms. Herron -

In the December 12, 2018 Board packet Mr. Pinkerton represents that $24K in the 2018-19 budget has been appropriated for "Legislative Advocacy," and another $6K is available in the General Fund which has been budgeted under "Professional Consultants" which has also been appropriated.

I would like to examine records which evidence precisely where both of these appropriations have been budgeted. Please don't you refer me to staff's version of the budget which sits on the public's web site unless you point me to exactly where both of these expenditures have been appropriated (I want a page number and a description of where the entry allegedly exists). I have gone though the same and as you know, neither is appropriated anywhere.

So instead, I want to examine other records which evidence exactly where these two expenditures have been budgeted.

Additionally, I want to examine records which:

1. Evidence the chart of account number(s) assigned for both of these appropriations; and,
2. Staff's purchase order forth both legislative advocacy and professional consultants under the General Fund.

Thank you for your cooperation. Aaron Katz

EXHIBIT "C"

EXPENDITURES BY FUNCTION AND ACTIVITY	(1) ACTUAL PRIOR YEAR ENDING 6/30/2017	(2) ESTIMATED CURRENT YEAR ENDING 6/30/2018	(3) BUDGET YEAR ENDING 06/30/19 TENTATIVE APPROVED	(4) BUDGET YEAR ENDING 06/30/19 FINAL APPROVED
GENERAL GOVERNMENT				
General Administration				
Salaries and Wages	30,534	30,500	28,215	28,215
Employee Benefits	16,918	16,500	17,639	17,639
Services and Supplies	504,297	450,000	416,064	408,064
Capital Outlay - current	148,435	132,000	392,250	392,250
Capital Outlay - carryover project	-	-	-	43,700
Subtotal General Administration	700,184	629,000	854,368	890,068
General Manager				
Salaries and Wages	235,185	238,000	247,506	247,506
Employee Benefits	85,922	95,000	114,563	114,563
Services and Supplies	26,915	35,000	56,740	56,740
Subtotal General Manager	348,022	368,000	418,809	418,809
Trustees				
Salaries and Wages	99,445	99,400	100,984	100,984
Employee Benefits	28,294	28,000	30,346	30,346
Services and Supplies	40,979	30,000	66,600	74,600
Subtotal Trustees	168,718	157,400	197,930	205,930
Accounting				
Salaries and Wages	608,487	560,000	566,805	566,805
Employee Benefits	265,249	255,000	268,079	268,079
Services and Supplies	59,592	60,000	68,390	68,390
Subtotal Accounting	933,328	875,000	903,274	903,274
Information Services & Technology				
Salaries and Wages	336,450	365,000	468,487	468,487
Employee Benefits	122,687	150,000	220,452	220,452
Services and Supplies	230,363	230,000	323,583	323,583
Subtotal Information Services	689,500	745,000	1,012,522	1,012,522
Risk Management				
Salaries and Wages	76,201	78,000	80,435	80,435
Employee Benefits	40,495	40,000	44,539	44,539
Services and Supplies	9,948	12,000	21,910	21,910
Subtotal Risk Management	126,644	130,000	146,884	146,884
Human Resources				
Salaries and Wages	319,779	365,000	416,216	416,216
Employee Benefits	169,113	182,000	236,294	236,294
Services and Supplies	38,775	52,000	76,573	76,573
Subtotal Human Resources	527,667	599,000	729,083	729,083
Health & Wellness				
Salaries and Wages	12,276	12,000	14,058	14,058
Employee Benefits	5,414	5,000	5,557	5,557
Services and Supplies	5,276	4,000	21,475	21,475
Subtotal Health & Wellness	22,966	21,000	41,090	41,090
Communications				
Salaries and Wages	99,562	99,000	81,313	81,313
Employee Benefits	47,874	46,000	32,236	32,236
Services and Supplies	85,637	125,000	78,030	78,030
Subtotal Communications	233,073	270,000	191,579	191,579
FUNCTION SUBTOTAL	3,752,102	3,794,400	4,495,539	4,539,239

Incline Village General Improvement District

SCHEDULE B - GENERAL FUND

FUNCTION General Government

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM J(1)(a) – OPEN MEETING LAW ("OML") FILE NO. 13897-305 – THE OFFICE OF THE ATTORNEY GENERAL ("OAG") DID *NOT* FIND THAT CHAIRPERSON WONG'S JULY 6, 2018 LETTER TO THE U.S. DEPARTMENT OF TRANSPORTATION ("USDOT") IMPERMISSIBLY COMMITTED IVGID TO SPENDING $7.5 MILLION IN MATCHING BUILD GRANT FUNDS TO CONSTRUCT TAHOE TRANSPORTATION DISTRICT'S ("TTD'S") BIKE PATH PROJECT

Introduction: On or about August 10, 2018 I filed an Open Meeting Law ("OML") complaint with the OAG against the IVGID Board[1]. My complaint was directed against Chairperson Wong's unilateral action, purportedly on the Board's behalf, committing $7.5 million "as a match for (TTD's) ...BUILD grant (application) to allow co-location and construction of" its proposed bike path project[2]. The basis of my complaint was that IVGID "staff, in tandem with TTD, drafted such...letter and presented it to...chairperson, Kendra Wong, for her signature, *on behalf of the IVGID Board*...rather than presenting the...letter to the Board for its approval (given it)...commits $7.5 million of rate payer funds as a 'match' for construction of TTD's pathway project."[3] And for this behavior, IVGID staff disingenuously proclaim "***No Open Meeting Law Violation***."[4] And that's the purpose of this written statement.

Attorney Guinasso's Excuse: was that Chairperson's "letter did not commit public funds (n)or make any other commitment that had not been previously approved by the Board of Trustees."[5]

The OAG's Conclusion: "Although (Chairperson Wong's)...Letter of Support indicates that the Board has funds available as a match for the (TTD's) co-location project, it did not legally obligate or commit the (IVGID) Board to payment of any money and (thus) was not an 'Action' of the Board."[6]

Why I Disagree With the OAG's Conclusion: The OAG concluded that "Chairwoman Wong's execution of the Letter of Support (wa)s consistent with the 'intent' of the Board's prior actions related to (an) Interlocal Agreement and subsequent amendment[7] to th(at) agreement with TTD."[8]

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[1] See pages 521-539 of the packet of materials prepared by staff in anticipation of this Board's February 6, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_2-6-19.pdf ("the 2/6/2019 Board packet")].

[2] See pages 533-534 of the 2/6/2019 Board packet.

[3] See page 525 of the 2/6/2019 Board packet.

[4] See page 4, the agenda portion of the 2/6/2019 Board packet.

[5] See page 496 of the 2/9/2019 Board packet.

[6] See pages 492-493 of the 2/9/2019 Board packet.

[7] Attorney Guinasso revels in the fact he can manipulate words and facts to make them state something other than the truth. And page 2 of his response to my OML complaint (see page 496 of

Putting aside the fact "intent" in executing an agreement is the equivalent of actually agreeing, I direct the reader to the amendment itself[9]. A close inspection reveals:

1. There is no agreement whatsoever that IVGID will in fact be permitted by TTD to relocate its effluent pipeline under TTD's proposed bike path;

2. Article II, ¶1[10] makes clear that any agreement which permits IVGID to relocate its effluent pipeline under TTD's proposed bike path *must* be the subject of "a future agreement" (in other words, nothing more than an agreement-to-agree which is no agreement at all);

3. Thus if IVGID is permitted to relocate its effluent pipeline under TTD's proposed bike path, there is no agreement what portion of TTD's BUILD grant, if approved, will be applied to IVGID's costs of relocating the proposed bike path;

4. If IVGID is permitted to relocate its effluent pipeline under TTD's proposed bike path, there is no agreement what costs IVGID will be assessed, future maintenance responsibilities, etc.;

5. Article I, ¶2[11] provides for nothing more than sharing in a portion of the cost (up to $300,000) of an Environmental Impact Statement ("EIS") associated with TTD's proposed bike path;

6. Moreover, whatever the amendment actually provides, Article II, ¶2[10] makes clear that either side "reserve(s) the right to...terminate (it)...*for any reason (whatsoever)* upon (a mere) thirty...day(s) written notice;"

7. And whatever the amendment actually provides, Article II, ¶2[10] makes clear that either side may unilaterally decide to "discontinue participation in *any future phases* of the (TTD's) co-alignment project;"

8. And whatever the amendment actually provides, Article II, ¶7[12] makes clear that "nothing contained (there)in...shall be deemed (n)or construed to create...*any* liability for one agency...with respect to the indebtedness, liabilities, and obligations of the other;" and,

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the 2/9/2019 Board packet) is a good example. There he wrongly represents that "Chair Kendra Wong signed (her) letter of support...consistent with (and)...in furtherance of the (Board's)...October 30, 2014...amend(ment) to...the Interlocal Agreement." For the OAG to have fixated upon this alleged assertion of fact to the exclusion of the language in the amendment itself, was error.

[8] See page 492 of the 2/9/2019 Board packet.

[9] See pages 334-339 of the packet of materials prepared by staff in anticipation of this Board's November 13, 2018 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_11-13-18.pdf ("the 11/13/2018 Board packet")].

[10] See page 335 of the 11/13/2018 Board packet.

[11] See page 334 of the 11/13/2018 Board packet.

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM J(1)(a) – OPEN MEETING LAW ("OML") FILE NO. 13897-305 – THE OFFICE OF THE ATTORNEY GENERAL ("OAG") DID *NOT* FIND THAT CHAIRPERSON WONG'S JULY 6, 2018 LETTER TO THE U.S. DEPARTMENT OF TRANSPORTATION ("USDOT") IMPERMISSIBLY COMMITTED IVGID TO SPENDING $7.5 MILLION IN MATCHING BUILD GRANT FUNDS TO CONSTRUCT TAHOE TRANSPORTATION DISTRICT'S ("TTD'S") BIKE PATH PROJECT

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Why I Disagree With the OAG's Conclusion Chairperson Wong's July 6, 2018 Letter to the USDOT Was Consistent With the Intent of the Board's Prior Actions Related to the Interlocal Agreement and its Subsequent Amendment: The OAG concluded that "Chairwoman Wong's execution of the Letter of Support (wa)s consistent with the 'intent' of the Board's prior actions

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[2] See pages 533-534 of the 2/6/2019 Board packet.

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[4] See page 4, the agenda portion of the 2/6/2019 Board packet.

[5] See page 496 of the 2/9/2019 Board packet.

[6] See pages 492-493 of the 2/9/2019 Board packet.

related to (an) Interlocal Agreement and subsequent amendment[7] to th(at) agreement with TTD."[8] I disagree. Putting aside the fact "intent" in executing an agreement is the equivalent of actually agreeing, I direct the reader to the amendment itself[9]. A close inspection reveals:

1. There is no agreement whatsoever that IVGID will in fact be permitted by TTD to relocate its effluent pipeline under TTD's proposed bike path;

2. Article I, ¶2[10] of the amendment provides for nothing more than sharing in a portion of the cost (up to $300,000) of an Environmental Impact Statement ("EIS") associated with TTD's proposed bike path;

3. Article II, ¶1[11] makes clear that any agreement which permits IVGID to relocate its effluent pipeline under TTD's proposed bike path *must* be the subject of "a future agreement" (in other words, nothing more than an agreement-to-agree which is no agreement at all);

4. Thus if IVGID is permitted to relocate its effluent pipeline under TTD's proposed bike path, there is no agreement to the effect of what portion of TTD's BUILD grant application, if approved, will be applied to IVGID's costs of relocating the proposed bike path;

5. If IVGID is permitted to relocate its effluent pipeline under TTD's proposed bike path, there is no agreement what costs IVGID will be assessed, future maintenance responsibilities, etc.;

6. For all of these reasons the project summary for phase II of the effluent pipeline project[12] expressly does *not* designate relocation under TTD's proposed bike path. Rather, it states that "the Export line will be replaced (and)...mov(ed)...to the center of the Southbound travel lane" of State Highway 28;

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[7] Attorney Guinasso revels in the fact he can manipulate words and facts to make them state something other than the truth. And page 2 of his response to my OML complaint (see page 496 of the 2/9/2019 Board packet) is a good example. There he wrongly represents that "Chair Kendra Wong signed (her) letter of support...consistent with (and)...in furtherance of the (Board's)...October 30, 2014...amend(ment) to...the Interlocal Agreement." For the OAG to have fixated upon this alleged assertion of fact to the exclusion of the language in the amendment itself, was error.

[8] See page 492 of the 2/9/2019 Board packet.

[9] See pages 334-339 of the packet of materials prepared by staff in anticipation of this Board's November 13, 2018 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_11-13-18.pdf ("the 11/13/2018 Board packet")].

[10] See page 334 of the 11/13/2018 Board packet.

[11] See page 335 of the 11/13/2018 Board packet.

[12] See pages 509-510 of the 2/9/2019 Board packet.

7. Moreover, whatever the amendment actually provides, Article II, ¶2[11] makes clear that either side "reserve(s) the right to...terminate (it)...*for any reason (whatsoever)* upon (a mere) thirty...day(s) written notice;"

8. And whatever the amendment actually provides, Article II, ¶2[11] makes clear that either side may unilaterally decide to "discontinue participation in *any future phases* of the (TTD's) co-alignment project;"

9. And whatever the amendment actually provides, Article II, ¶7[13] makes clear that "nothing contained (there)in...shall be deemed (n)or construed to create...*any* liability for one agency...with respect to the indebtedness, liabilities, and obligations of the other;" and,

10. And whatever the amendment actually provides, Article II, ¶13[14] makes clear it "constitutes the *entire agreement* between the parties and (it) is intended as *a complete and exclusive statement of the* promises, representations, negotiations, discussions and other agreements that may have been made in connection with the subject matter hereof...(And moreover,) unless otherwise expressly authorized by the terms of this agreement, no modification (n)or amendment...shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto."

Thus Chairwoman Wong's execution of her July 6, 2018 letter to the USDOT could not possibly have been consistent with the intent of the Board's prior actions related to the Interlocal Agreement and subsequent amendment to that agreement with TTD. Which means there is no justification for the OAG's conclusion.

Why I Disagree With the OAG's Conclusion Chairperson Wong's July 6, 2018 Letter to the USDOT Did Not Obligate Nor Commit the Board to Payment of Any Money: The OAG concluded that Chairperson Wong's "Letter of Support...did not legally obligate or commit the (IVGID) Board to payment of any money."[6] I disagree.

First of all, Ms. Wong's July 6, 2018 letter was signed by her as "*Chairwoman* (of the)...Incline Village General Improvement District('s)...Board of Trustees." The clear import of her words was that she was signing the letter on behalf of the IVGID Board as a whole. How possibly could anyone have known that she was acting unilaterally without Board knowledge or consent?

Second of all, if Ms. Wong's intent were merely to voice "support" for TTD's Build Grant application, then why the need to make reference to the fact that IVGID had funds "available as a match for (TTD's) BUILD grant?" The answer to this question reveals the letter was intended to voice far more than mere support for TTD's BUILD grant application.

Third of all, Ms. Wong's inclusion of pointed language to the effect that "IVGID has $7.5 million dollars available *as a match* for (TTD's) BUILD grant" was clearly intended and so understood to send

[13] See page 337 of the 11/13/2018 Board packet.

[14] See page 338 of the 11/13/2018 Board packet.

the following message: if TTD's BUILD grant application is granted, IVGID will match that grant with up to $7.5 million.

The OAG's conclusion this language did not legally obligate nor commit the IVGID Board to payment of any matching funds, is unsupported by fact or law. Had the TTD's BUILD grant application been granted and the USDOT asked for evidence of IVGID's matching funds, does anyone honestly believe IVGID/TTD would not be subjected to legal consequence if IVGID did not provide that evidence/those funds,?

Given the answer is clearly "no," the OAG's conclusion that Chairperson Wong's "Letter of Support...did not legally obligate or commit the (IVGID) Board to payment of any money"[6] is neither supported by law or fact. Which means there was no justification for the OAG's conclusion.

Why Have Staff Agendized This Matter for Possible Action? Take a look at the way agenda item J(1)(a)[4] is described: "Possibl(e) review and discuss(ion of the)...OAG('s) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – ***Finding by OAG of no violation***...This item is included on this agenda in accordance with NRS 241.0395." Take a look at the OAG's letter[15]. Do you see the words "findings of fact and conclusions of law" stated *anywhere*? *Bueller, Bueller, Bueller*[16]. The answer is "no" because the letter *doesn't* represent findings nor conclusions; it's simply a letter.

Moreover, NRS 241.0395 does *not* mandate that letters like the OAG's subject letter be placed on the agenda and "treated as supporting material." Rather according to NRS 241.0395(1), *only* when the OAG "makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, (must) the public body...include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law." Do you see the words "action in violation of any provision of" NRS 241 stated anywhere in the OAG's letter[15]? The answer is "no" because staff have described the letter as "finding by OAG of no violation," and the letter itself *doesn't* find that the IVGID Board has violated NRS 241.

So Why Have Staff Gratuitously Agendized the OAG's January 18, 2019 Letter for This Meeting? We've had this discussion before. It's called *propaganda*! Staff want to use every opportunity possible to marginalize critics like me. So whenever there's anything complimentary of staff or the Board, staff "cheerleaders" are quick to publicize it (and in bold, italicized print no less). Yet whenever there's anything detrimental to staff or the Board that warrants or mandates publication to the public, the agenda is worded in a misleading or deceitful manner, we hear explanations and excuses rather than placing blame where it should be placed, and critics are attacked as nothing more than a small group of dissidents[17] in order to marginalize their message. As

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[15] See pages 491-493 of the 2/6/2019 Board packet.

[16] See https://www.youtube.com/watch?v=f4zyjLyBp64 from the movie "Ferris Bueller's Day Off."

[17] As should be demonstrable from the election, this "small group of dissidents" has now grown to nearly 2,300 residents!

an example of what I am talking about, the reader is invited to look at the agenda for the Board's March 13, 2018 special meeting[18] as well as item G(4) to this agenda[19].

Rather than acknowledging the OAG's Findings of Fact and Conclusions insofar as an actual OML violation in File No. 13897-257, agenda item G(4) agendized the filing of the equivalent of a new lawsuit aimed at setting aside those findings and conclusions. Does the agenda inform the public that here there were actual violations of the OML? Does it use italicized and bold print to inform the public that here there were in fact ***Open Meeting Law Violations***? Do you think these omissions were innocent, inadvertent and unintentional[20]?

Ladies and Gentlemen, the deeper one digs, the dirtier it gets. NEVER does one reach a core of truth nor goodness insofar as IVGID senior management is concerned. The entire system we know as IVGID is built upon lie after lie after lie perpetrated by un-elected staff who are more committed to themselves, their public employee colleagues, and a select number of special interest groups, rather than the Board, the public and local property/residential dwelling unit owners (who involuntarily subsidize all of this) they were hired to serve. This is the IVGID "way." The IVGID "culture." The truth as to where your Rec Fee is really spent[21]. And another example of the reason why that fee will NEVER, NEVER be eliminated or reduced.

Naysayers will argue that members of the public who make OML complaints, such as the one the subject of this written statement, are the problem. They will assert that critics like me are interfering with our public employees' jobs. But did they ever stop to think that if staff's actions were truly open, transparent and lawful, there would be little need for anyone to file an OML complaint? And if there were little need to file an OML complaint, there would be little need to pay attorney Guinasso to defend them[22]. And have naysayers stopped to think that if the Board did its job[23] of

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[18] See the agenda prepared by staff in anticipation of this Board's March 13, 2018 special meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Special_3-13-2018.pdf ("the 3/13/2018 Board packet")]. That agenda is attached as Exhibit "A" to this written statement, and I have placed an asterisk next to the description of agenda item F(2).

[19] See page 3, the agenda portion of the 2/6/2019 Board packet. A copy of this page is attached as Exhibit "A" to this written statement, and I have placed an asterisk next to the item description.

[20] If so, give me a call. I've got a couple of publicly owned bridges for sale.

[21] The reader's attention is directed to pages 209-215 of the 2/6/2019 Board packet. There attorney Guinasso (he is identified as an author of the memorandum) asks that the Board approve the expenditure of $5,000 on such a lawsuit. Given I have demonstrated on so many occasions before that IVGID budgets to overspend nearly $7 million more, annually, than the revenues it assigns to our recreation and beach venues, and this overspending is subsidized by the Recreation ("RFF") and Beach ("BFF") Facility Fees, the subject $5,000 is being paid by the RFF.

[22] Attorney Guinasso will disingenuously retort that IVGID is not being charged anything to defend OML complaints against the district because that defense is included in his monthly retainer.

supervising staff[24] and ensuring that the NRS is adhered to[25], there would be no need for members of the public to do the Board's job? Thus the retort from naysayers lacks credibility.

Conclusion: This episode is yet another example that we have a Board in name only. The GM acts without Board approval, and then points to a resolution staff drafted which gives him the power to do what he does. The attorney files and prosecutes lawsuits without Board approval, and then points to a policy staff drafted which gives him the power to do what he does. The Board chairperson acts in the name of the Board without first obtaining its approval, and then asserts she hasn't acted.

How many tens of thousands of dollars has attorney Guinasso cost the public with his unilateral and wasteful acts on the District's behalf? How many hundreds of thousands of dollars has GM Pinkerton cost the public with his unilateral and wasteful acts on the District's behalf? How many tens of thousands of dollars of unreported staffing costs have been wasted on Chairperson Wong's unilateral acts on the District's behalf? And now that the TTD's BUILD grant application has been denied, how many hundreds of thousands of dollars have been wasted chasing this co-location pipe dream rather than replacing phase II of the effluent pipeline which was supposed to have been

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However, that monthly retainer totals a minimum of $10,000/monthly. Not only is this is an outrageous sum for a general improvement district to incur, but if the defense of OML complaints were not included in the services provided for this retainer, don't you think that retainer amount would be considerably less. In fact to prove the point, look at pages 33-37 of the 2/6/2019 Board packet. Here staff attempt to justify a 20% increase in attorney Guinasso's monthly retainer fee (proposed to be $12,000) because of "the substantial amount of [additional (i.e., responses to OML complaints)] service provided under the (current) retainer." In fact, listen to this language from page 37 of the 2/6/2019 Board packet: The "proposed agreement (see ¶¶6.3.3 and 6.3.3.1 on page 49 of the 2/6/2019 Board packet) includes (only) one OML complaint response every six months for a total of two...per calendar year. If there are additional OML complaints filed in excess of this limit, the proposed agreement includes a provision/charge ("a flat rate of $2,500") for that scenario." In other words, attorney's disingenuous retort can no longer be made!

[23] Given: NRS 318.185 instructs that "the board shall have the power to prescribe the duties of (its) officers, agents, employees and servants;" NRS 318.175(1) instructs that "the board shall have the power to manage, control and supervise all the business and affairs of the district;" NRS 318.210 instructs that "the board shall have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter;" and, NRS 318.015(1) instructs that "for the accomplishment of these purposes the provisions of this chapter (NRS 318) shall be broadly construed;" the Board is required to supervise its staff.

[24] Remember, staff and their "fixer" attorney Guinasso have indoctrinated Board members into believing they have no powers other than making policy.

[25] Given NRS 318.515(1)(b) instructs that corrective action may be initiated where "the board of trustees of the district is not complying with the provisions of this chapter (n)or with any other law," the Board is required to ensure that the NRS is adhered to.

commenced *four years ago*[26]? Why have a Board and why have an OAG which is supposed to enforce the OML by penalizing Board members who commit public funds without first obtaining Board approval at a meeting publicly noticed?

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

[26] The reader's attention is directed to my separate written statement submitted in response to staff's utility rate study.

EXHIBIT "A"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

NOTICE OF MEETING

The special meeting of the Incline Village General Improvement District will be held starting at 11:30 a.m. on Tuesday, March 13, 2018 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

Time Certain - 11:30 a.m. - A presentation will be given to the Board of Trustees by State of Nevada, Ethics Commission, Executive Director Nevarez-Goodson. This presentation is informational/educational in nature.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – *A public body has a legitimate interest in conducting orderly meetings. IVGID may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

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

The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.

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

1. Regular Meeting of February 7, 2018

F. GENERAL BUSINESS *(for possible action)*

1. Order of Affirmance from the Supreme Court of the State of Nevada, Aaron L. Katz, Appellant vs. Incline Village General Improvement District, Respondent, No. 70440 dated February 26, 2018 (Chairwoman Kendra Wong)

2. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-260, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)

3. Adoption of District Boundary Map as presented by the Washoe County Registrar of Voters – Map dated January 24, 2018 (Requesting Staff Member: General Manager Steve Pinkerton)

4. Review, discuss, and possibly provide input to the Overview of 2018/2019 Operating Budget Presentation (Requesting Staff Member: District General Manager Steve Pinkerton)

   Order of Presentation:
   Beaches
   Recreation Programming
   Community Services Administration
   Tennis
   Parks
   Diamond Peak Ski Resort
   Golf Courses at Incline Village (Championship and Mountain)
   Facilities
   General Fund
   Internal Services
   Utilities

G. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see **Public Comment Advisory Statement** above.

H. ADJOURNMENT *(for possible action)*

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Thursday, March 8, 2018 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of March 13, 2018) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley's Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID's Recreation Center
7. The Chateau at Incline Village

/s/ Susan A. Herron CMC
Susan A. Herron, CMC
District Clerk (e-mail: sah@ivgid.org/phone # 775-832-1207)

Board of Trustees: *Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.*

Notes: *Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.*

IVGID'S agenda packets are now available at IVGID's web site, www.yourtahoeplace.com; go to "Board Meetings and Agendas". A hard copy of the complete agenda packet is also available at IVGID's Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.

**NRS 241.020(2) and (10): 2.Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting ...10. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.*

EXHIBIT "B"

5. Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong) – ***pages 411-415***

6 Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong) – ***pages 416 - 444***

7. Election of Board Officers for 2019 – effective at the end of this meeting – ***page 445***

H. DISTRICT STAFF UPDATE *(for possible action)*

1. General Manager Steve Pinkerton – Verbal Report
   a. Mountain Golf Course Clubhouse
   b. Pending FEMA Reimbursements

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

1. Regular Meeting of January 23, 2019 – ***pages 446 - 489***

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

   a. Possibly review and discuss Office of Attorney General (OAG) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – ***Finding by OAG of no violation – pages 490 - 539***

   This item is included on this agenda in accordance with NRS 241.0395 which reads as follows:

   NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

   1. *If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.*
   2. *The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.*

   (Added to NRS by 2011, 2384)

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM C – PUBLIC COMMENTS – FAILURE TO ACKNOWLEDGE FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: OPEN MEETING LAW ("OML") VIOLATION

Introduction: On January 17, 2019 the OAG issued its findings of fact and conclusions of law ("findings and conclusions") in File No. 13897-257. Those findings and conclusions determined that IVGID had taken action in violation of NRS 241. Given NRS 241.0395(1) instructs that where the OAG "makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body *must include an item* on the next agenda posted for a meeting of the public body *which acknowledges the findings of fact and conclusions of law*," yet here none has been agendized, this written statement is submitted.

Although the Agenda for the IVGID Board's January 23, 2019 Meeting Could Have Included an Item Acknowledging the OAG's Findings and Conclusions, it Didn't: The agenda for the Board's January 23, 2019 meeting was not posted nor published until January 18, 2019 at 9:00 o'clock A.M.[1] Given it has been my experience that when the OAG issues a letter or findings and conclusions in response to the filing of an OML complaint it sends a duplicate copy as an attachment to an e-mail, I expect IVGID's attorney was given actual notice of the OAG's findings and conclusions on January 17, 2019 by e-mail. That being the case, acknowledgment of the OAG's findings and conclusions could have been agendized for the Board's January 23, 2019 meeting. Yet it wasn't[2].

The Agenda For This Meeting Fails to Include an Item Which Acknowledges the OAG's Findings and Conclusions: Let's assume for purposes of argument that IVGID didn't have sufficient time to agendize formal acknowledgment of the OAG's findings and conclusions for the meeting held January 23, 2019. The Board's next meeting was the current one. Notwithstanding, *nowhere* have staff included an item which acknowledges the OAG's findings and conclusions[3].

Take a look at the agenda for this meeting (Exhibit "B"). Do you see where formal acknowledgment has been agendized for review, discussion and possible corrective action? Had it been so agendized, wouldn't it have read as agenda item J(1)(4) for this meeting[2] reads [i.e., "Possibl(e) Review and Discuss(ion of)...OAG File No. 13897-2(57) Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. (Frank Wright) – ***Finding by OAG of (OML)... Violation***"]? I submit that because IVGID has demonstrated it knows how to agendize acknowledgment of the OAG's findings and conclusions, yet it didn't do so insofar as the subject findings and conclusions were concerned, demonstrates that staff have *intentionally* failed to

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[1] I have placed an asterisk next to this fact on Exhibit "A."

[2] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_1-23-19.pdf. A copy of this agenda is attached as Exhibit "A" to this written statement.

[3] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular2-6-19.pdf. A copy of this agenda is attached as Exhibit "B" to this written statement.

agendize acknowledgment of the OAG's findings and conclusions. And as a result, under the alleged professional guidance of attorney Guinasso and GM Pinkerton, the IVGID Board has committed another OML violation which is going to result in the filing of another OML complaint. *Thank you professionals*!

Agendizing an Item Which Asks Whether to Initiate a New Lawsuit is Far Different Than Agendizing "Acknowledgment" of the OAG's Findings and Conclusions: Assuming IVGID argues differently, listen to what agenda item G(4) asks for: "that the Board...makes a motion to authorize District Legal Counsel to file a Petition for Judicial Review of the OAG's...findings and conclusions."[4] It clarifies this request later in the memorandum in support as follows: "we are treating it like the initiation of a lawsuit."[5] Furthermore, listen to this: "we are...bringing (this motion) before the Board... in accordance with Policy 3.1.0.6...which reads (as follows:) 'The General Manager must obtain Board ...authorization, at a public meeting, *to initiate any lawsuit*.'"[5] Does this sound like *acknowledging* and OML violation? Or does it sound like *challenging* the OAG's findings and conclusions which have resulted in a violation by seeking approval to initiate a new lawsuit?

Simply stated, agenda item G(4) asks for authority to initiate a new lawsuit against the OAG.

Moreover, IVGID staff have demonstrated they know how to agendize "acknowledgment of the OAG's findings and conclusions" pursuant to NRS 241.0395(1). Therefore if that were their intent, it would have been a very simple thing to have done. Yet it wasn't done. Instead, IVGID staff have artfully described agenda item G(4) to sound as if it is complying with the OAG's instructions[6], when in-truth-and-in-fact they haven't. They "pooh-pooh" the OAG's findings and conclusions by referring to them a "academic," they assert that the OML complaint "was clearly meritless,"[7] and as proof, they point to the fact IVGID has "not (been) penalized...in any way."[8]

The Purposes for Requiring the OAG's Findings and Conclusions to Be Agendized, Have Been Circumvented: The reasons why OML violations are required to be agendized and acknowledged is at least threefold. First, to embarrass the governmental entity's governing board by "clearly and

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[4] See page 209 of the packet of materials prepared by staff in anticipation of the Board's February 6, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_2-6-19.pdf ("the 2/6/2019 Board packet")].

[5] See page 215 of the 2/6/2019 Board packet.

[6] Page 223 of the 2/6/2019 Board packet states as follows: "the Board must place an item on its next Board Meeting agenda in which the Board acknowledges the present Findings of Fact and Conclusions of Law ("Opinion") which results from the OAG investigation in the matter of OAG File No. 13897-257."

[7] See page 211 of the 2/6/2019 Board packet.

[8] See page 210 of the 2/6/2019 Board packet.

completely"[9] acknowledging to the public that they have committed an OML violation. Does IVGID sound embarrassed?

Second, this notice presumably gives the public the opportunity to question their board to why the violation occurred in the first place, in a public meeting setting? If IVGID staff won't even acknowledge that an OML violation occurred, how can the public question their board as to why it occurred?

Finally, this notice presumably gives the Board the opportunity to apologize to the public and adopt measures to ensure that similar future violations do not occur. Do staff sound as if they are apologizing?

These lofty purposes are thwarted when formal "acknowledgment" is deceitfully worded as it has in this instance. Here IVGID staff's intent has been to hide the fact its Board has committed an OML violation. Instead it wants to advance the narrative that it is the victim of OAG findings and conclusions that re in excess of the OAG's powers, and it is acting in the public's best interests to reverse what they complain is an injustice.

Listen to Attorney Guinasso's Misstatement of Fact (aka "Do as I Say, Not as I Do):" "IVGID has a record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency."[10] Really? Is that what IVGID staff have done here?

Conclusion: Now that the OAG has concluded there are *REAL* problems here in Incline Village/ Crystal Bay, the reader can see how staff work to hide this fact from the public through their deceit, misrepresentation(s), misuse of the vehicles of public communication, mislabeling of agendas, and outright propaganda (what they disingenuously call "transparency"). Board members can stick their collective heads in the sand and deny there are problems in River City (because you can "bring a horse to water, but you can't make him drink"). Or they can defer to the biased explanations from a less than forthright staff and attorney *who are part of the problem*. Or they can look for ways to attack and marginalize critics like me who are nothing more than messengers, making us the focus of attention rather than the issues we have identified – here staff's failure to agendize acknowledgment of the OAG's findings and conclusions.

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

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[9] NRS 241.020(2)(d)(1) states as follows: "The notice (for)...all meetings must...include...an agenda consisting of...*a clear and complete statement* of the topics scheduled to be considered during the meeting."

[10] See page 498 of the 2/6/2019 Board packet. I have attached a copy of that page with an asterisk next to the quoted language as Exhibit "C" to this written statement.

EXHIBIT "A"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on **Wednesday, January 23, 2019** in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – *A public body has a legitimate interest in conducting orderly meetings. IVGID may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

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

The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.

E. REPORTS TO THE BOARD OF TRUSTEES*

1. Verbal Legislative Update from Tri-Strategies representative(s)

F. CONSENT CALENDAR *(for possible action)*

1. Review, Discuss, and Possibly Award a Construction Contract for the ADA Access for On-Course Restrooms Project – 2017/2018 Capital Improvement Project: Fund: Golf; Division: Mountain Golf; Project # 3241BD1402; Vendor: Colbre Grading and Paving in the amount of $99,395 (Requesting Staff Member: Engineering Manager Charley Miller)

G. GENERAL BUSINESS *(for possible action)*

1. Utility Rate Study Presentation – 2019 (Requesting Staff Member: Director of Public Works Joe Pomroy)

2. Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong)

3. Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong)

4. Election of Board Officers for 2019 – effective at the end of this meeting

H. DISTRICT STAFF UPDATE *(for possible action)*

1. General Manager Steve Pinkerton
   a. Status of Mountain Golf Course Clubhouse

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

1. Regular Meeting of December 12, 2018

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

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

NOTICE OF MEETING

L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see **Public Comment Advisory Statement** above.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR *(for possible action)*

N. ADJOURNMENT *(for possible action)*

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, January 18, 2019 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of January 23, 2019) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
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5. Incline Village Branch of Washoe County Library
6. IVGID's Recreation Center
7. The Chateau at Incline Village

/s/ Susan A. Herron, CMC
Susan A. Herron, CMC
District Clerk (e-mail: sah@ivgid.org/phone # 775-832-1207)

Board of Trustees: Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.

Notes: *Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.*

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**NRS 241.020(2) and (10): 2.Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting ...10. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.*

NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on **Wednesday, February 6, 2019** in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – *A public body has a legitimate interest in conducting orderly meetings. IVGID may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

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

The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.

EXHIBIT "B"

E. REPORTS TO THE BOARD OF TRUSTEES*

1. Verbal presentation by representative(s) from Tahoe Prosperity Center

2. Verbal presentation by representative(s) from North Lake Tahoe Fire Protection District

F. CONSENT CALENDAR *(for possible action)*

	Excerpt from Policy 3.1.0, Conduct Meetings of the Board of Trustees
0.15	**Consent Calendar.** In cooperation with the Chair, the General Manager may schedule matters for consideration on a Consent Calendar. The Consent Calendar may not include changes to user rates or taxes, adoption or amendment of ordinances, or any other action which is subject to a public hearing. Each consent item shall be separately listed on the agenda, under the heading of "Consent Calendar." A memorandum will be included in the packet materials for each Consent Calendar item. The memorandum should include the justification as a consent item in the Background Section. Any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting.

1. Review, discuss, and possibly set the dates for the public hearings on the following matters:

   a. Review, discuss, and possibly set Date and Time for Public Hearing for the 2019/2020 Budget and Recreation Roll for Wednesday, May 22, 2019, 6:00 p.m.

   b. Review, discuss and possibly set the date/time for April 10, 2019 at 6:00 p.m. for the public hearing on the proposed amendments to Sewer Ordinance #2 "An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District" and Water Ordinance #4 "An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District" that Includes the Utility Rate Increase

2. Review, discuss, and possibly approve a Grant of Easement to NV Energy on District Property APN: 128-352-01 (687 Wilson Way) for the Purposes of Constructing, Operating, Adding to, Modifying, Removing, Accessing and Maintaining Above and Below Ground Communication Facilities and Electric Line Systems (Requesting Staff Member: Director of Public Works Joe Pomroy)

G. GENERAL BUSINESS *(for possible action)*

1. Review, discuss, and possibly provide input and guidance on legislative matters for the 2019 State of Nevada Legislative Session following a verbal presentation on legislative matter provided by Tri-Strategies representative(s)

2. Review, discuss, comment and possibly adopt a Popular Report format under 2018 Board Work Plan (Requesting Staff Member: Director of Finance Gerry Eick)

3. Review, discuss, and possible approve a three year agreement with Hutchison & Steffen for District General Counsel services at a cost of $12,000 per month or $144,000 per year (Requesting Trustee: Vice Chairman Phil Horan and Requesting Staff Member: General Manager Steve Pinkerton)

4. Review, discuss, and possibly request a Petition for Judicial Review of Office of Attorney General File No. 13897-257 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Frank Wright (Requesting Staff Member: General Manager Steve Pinkerton and District General Counsel Jason Guinasso)

   This item is included on this agenda in accordance with NRS 241.0395 which reads as follows:

   NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

   1. *If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.*

   2. *The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.*

   (Added to NRS by 2011, 2384)

5. Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong)

6 Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong)

7. Election of Board Officers for 2019 – effective at the end of this meeting

H. DISTRICT STAFF UPDATE *(for possible action)*

1. General Manager Steve Pinkerton – Verbal Report
   a. Mountain Golf Course Clubhouse
   b. Pending FEMA Reimbursements

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

1. Regular Meeting of January 23, 2019

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

   a. Possibly review and discuss Office of Attorney General (OAG) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – ***Finding by OAG of no violation***

   This item is included on this agenda in accordance with NRS 241.0395 which reads as follows:

   NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

   1. *If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.*
   2. *The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.*

   (Added to NRS by 2011, 2384)

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

NOTICE OF MEETING

L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see **Public Comment Advisory Statement** above.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR *(for possible action)*

N. ADJOURNMENT *(for possible action)*

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, February 1, 2019 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of February 6, 2019) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley's Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID's Recreation Center
7. The Chateau at Incline Village

/s/ Susan A. Herron, CMC
Susan A. Herron, CMC
District Clerk (e-mail: sah@ivgid.org/phone # 775-832-1207)

Board of Trustees: *Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.*

Notes: *Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.*

IVGID'S agenda packets are now available at IVGID's web site, www.yourtahoeplace.com; go to "Board Meetings and Agendas". A hard copy of the complete agenda packet is also available at IVGID's Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.

**NRS 241.020(2) and (10): 2.Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting ...10. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.*

EXHIBIT "C"

> Chairwoman Kendra Wong, speaking of the Letter of Support: "I did read the letter beforehand and made sure I wasn't committing us (the District) to spending any funds, it wasn't anything that would commit the District to anything that would be outside the role of an individual Board member."

See Exhibit D (Livestream link of July 24, 2018 IVGID Board of Trustees Meeting, beginning timestamp 3:05:13, ending timestamp 3:05:28)

Absent a commitment of public money on an endeavor which requires the governing board's approval, there can be no violation as alleged. Mr. Katz's hypervigilance and hypersensitivity to District action have caused him to erroneously interpret both the Letter of Support and Nevada OML, in an effort construe any possible violation.

IV. Closing Remarks

Scope of Response

IVGID has not responded to each and every assertion submitted in Mr. Katz's narrative. IVGID's response has focused on whether there was a violation of the Nevada Open Meeting Law.

IVGID Did Not Violate the Open Meeting Law

In the event that this memorandum has failed to address an alleged violation of the Nevada Open Meeting Law due to the vagueness and ambiguity of Mr. Katz's Complaint, IVGID denies that any such violation has occurred. IVGID has a record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

Please do not hesitate to call or write me if you have any further questions or need any further information.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Aaron Katz, A.G. File No. 13897-305.

Sincere regards,

HUTCHISON & STEFFEN, LLC
Jason D. Guinasso, Esq.

cc: Chairwoman Kendra Wong
General Manager Steve Pinkerton
District Clerk Susan Herron

JDG:ts

My comments tonight are in reference to the illegal initiation of a lawsuit by GM Pinkerton against Governance Sciences Group, Inc. (more commonly known in our community as ***Flash Vote***)

Pinkerton claimed authority to issue a contract to initiate litigation with no specific dollar amount established.

Attorney Guinasso has stated that the GM had authority to initiate the lawsuit under Board's contracts Policy 3.1.0(f)

GM Pinkerton's authorization to enter into any contract, under that policy, is based on a numeric financial amount as DEFINED and stated in Nevada Revised statutes 332 for purchases and 338 for public works projects.

Under NRS 332 the GM would have authority to issue a contract less than $50,000 (providing the purchase is budgeted) without Board of Trustee approval.

Under NRS 338 the GM would have authority to issue a contract for up to $100,000 (providing the public works project is budgeted) without Board of Trustee approval

Since the contract (work order under Guinasso retainer agreement) to initiate litigation had NO DOLLAR AMOUNT OR ANY AMOUNT WHICH COULD BE PREDETERMINED, THEN POLICY 3.1.0(F) COULD NOT BE APPLICABLE.

Since no dollar amount could be determined then the requirements for approval by the Board of Trustees could not be determined.

As anyone involved in litigation knows, the cost of litigation can never be a predetermined because it is unknown the extent of discovery which may be required and the unknown extent of filing by the opposing party in a litigation. Therefore the costs are always unkonown.

Guinasso use of this policy is a RED HERRING.

The General Manager had no authority to unilaterally enter into **any contract with any legal firm to engage in litigation where a predetermined dollar amount could never be established.**

This was a simple case of circumventing the law to avoid public scrutiny over the expenditure of public money for litigation so IVGID could recover data from FlashVote that was never provided by IVGID to FlashVote. This litigation was nothing more than to inflict pain on a local business for cancelling a tiny $4,000 contract (which most money was returned by FlashVote to IVGID)

IVGID, GM Pinkerton and Attorney Guinasso with the assistance of three board members operates as a rogue agency, with illegal meetings, cavalier and illegal spending on legal costs, foolish spending on outside consultants, along with illegal reallocation of our utility funds.

With Mr. Horan's questionable residency, ~~and~~ Mr. Morris's business bankruptcy, Mr. Guinasso's defense of the indefensible, and Ms. Wong's IVGID related litigation. IVGID's run as a rogue agency may be skating on very thin ice. It may only be a matter of time before even IVGID's cheerleading squad may abandon the gang of five. Nixon had his Watergate – Which stupid and illegal act will bring honesty and integrity back to IGVID.

Mike Abel

We have a problem with our legal counsel.

First, the contract with his firm allows for billable hours related to litigation activities. In other words, if Mr. Guinasso restricts public documents or public records and a citizen sues the District, he and his firm gain additional revenue. This is clearly a conflict of interest, as I have mentioned to this board in the past. Therefore, I suggest the Board modify the legal services contract before you this evening and engage another firm for activities that are identified as billable services. This removes any real or perceived conflict of interest and in the end may save us money.

If it was his recommendation to move forward with the GSI litigation, he and Mr. Pinkerton violated Board Policy 3.1.0 – Contracts. This policy, is based on the amount as DEFINED advertising thresholds as stated in Nevada Revised statutes 332 for purchases and 338 for public works projects.

Under NRS 332 the GM has the authority to issue a contract less than $50,000 providing the purchase is budgeted. The GSI litigation was not budgeted nor was it a DEFINED contract amount. Cost of litigation is never be a predetermined contract amount because of the variable costs related to discovery and the unknown extent of filing by the opposing party.

Therefore according to Board Policy, the General Manager did not have the authority to unilaterally engage in litigation where a predetermined dollar is not defined nor budgeted.

Here is my suggestion. Think back. The District spent about $50,000 with Mr. Guinasso's firm and the District received NOTHING in return. So, before deciding spend more public funds with Mr. Guinasso and his firm to argue the Attorney General ruling, consult another legal opinion. We all get second options or estimates in our personal lives, let's do the same for tax paying citizens.

Lara Schmitz

IVGID February 6, 2019 BOT Meeting Public Comments
By: Linda Newman – To Be Included With The Minutes of the Meeting

First, Item 1.b. The memo refers to a reserve fund set by Board Policy 7.1.0 and asserts a current target value of $1.88 million for the Utility Fund. This policy makes no mention of a "reserve fund" and only relates to the General Fund and the Special Revenue Funds. The Utility Fund is an enterprise fund and its working capital requirements must comply with Policy 19.1.0 and Practice 19.2.0. At the last meeting, both Trustees Horan and Dent required Mr. Eick to provide the calculations to support compliance with this Policy and Practice. It is not in the Board Packet. In addition, the Memo refers to funding for the Effluent Export Project. There is no such project –it has recently been invented by GM Pinkerton. The District has been collecting $2 million per year to fund the $23 million replacement of 6 miles of pipeline in SR 28. It is Effluent Pipeline – Phase II. And just in case you missed it, the Utility Fund does not have enough revenues to cover the capital projects the Board has already approved. This Board cannot approve an increase in water and sewer rates based upon a Rate Study that is both misleading and inaccurate.

Secondly, I object to retaining the services of Counsel Guinasso. Over the last four years, he has failed to ensure that the Board and Staff comply with Nevada Law and its own Policies, Practices, Ordinances and Resolutions. He has taken actions in defiance of Board direction. He has failed to exercise proper due diligence and has rendered incorrect legal opinions on so many important matters I will only have time to list a few. The Parasol Debacle; His participation in the sale of an unbuildable lot to a private buyer in violation of the agreement with Washoe County; His concealment of public records and his claim of attorney- client privilege to emails that are not in fact privileged. The latter has resulted in a citizen's lawsuit and the use of our public money to keep a citizen from receiving those very same public records. Under his direction, there have been more than 16 Open Meeting Law violations. The latest are the most egregious – the Attorney General found that Trustees Wong, Horan, and Morris took action in a closed session with Legal Counsel to initiate a lawsuit. Had the AG been notified within 60 days of the filing, they would have voided this action in District Court. The AG also stated that contrary to Guinasso's claims, the GM and Counsel did not have the authority to initiate the lawsuit and expend public funds without Board approval in a public meeting. This cost the District more than $70,000 – more than $50,000 landed in the pocket of Mr. Guinasso and his law firm; it harmed a local business, deprived our citizens from participating in independent surveys; and unlawfully excluded two Trustees from conducting the public's business publicly.

This Attorney should have been terminated months ago. We cannot afford three more days, let alone three more years of his malpractice.

IVGID Corruption: "The dishonest or fraudulent conduct by those in power."

Part I

Trustees Wong, Horan and Morris along with IVGID's Fixer Jason Guinasso Strike Again and the Office of the Nevada Attorney General Strikes Back

On January 17, 2019 the Office of the Attorney General ("OAG") determined that Trustees Wong, Horan and Morris violated the Open Meeting Law ("OML") by taking action to authorize the initiation of a Lawsuit during its closed Attorney-Client Session with Counsel Guinasso on April 28th, 2017. The OAG further notes that "had it timely learned of the Open Meeting Law ("OML") violation regarding the initiation of the Lawsuit, that it would have filed suit in district court to have the action declared void."

The "Lawsuit" referenced is the litigation IVGID waged against Governance Sciences Group ("GSG"), the parent company of FlashVote, on May 16th of 2017. The secret April meeting occurred late at night after a regularly scheduled Board Meeting. At that time, Trustee Callicrate was not in attendance and Trustee Dent was asked to leave before the Board majority took unlawful action. Along with Trustees Dent and Callicrate our citizens were kept in the dark when Jason Guinasso filed the injunction to stop FlashVote from conducting independent surveys and demanding that GSG return Customer Data IVGID claimed to have given to FlashVote.

When our citizens learned of this lawsuit which the Board did not notice, authorize and appropriate public funds in a public meeting as required by Nevada law, Fixer Guinasso stated that Board Policy 3.1.0, Resolution 1480 and Legal Counsel's Retainer Agreement allowed the General Manager, using his under $50,000 discretionary spending authority, to engage Mr. Guinasso and his firm to initiate and prosecute this litigation. Thus, according to the Fixer, Nevada law did not apply. The OAG later invalidated the Fixer's assertion and in their Findings of Fact stated: "Neither the Board's Policies and Practices, its Policy and Procedure Resolutions, nor its retainer agreement with legal counsel grant the authority to the Board's General Manager or legal counsel to initiate lawsuits on behalf of the Board."

As the months wore on, Counsel Guinasso continued to demand customer data that a public records request definitively showed did not exist, and racked up more legal bills to obtain a preliminary injunction which stopped FlashVote from doing any independent surveys of our Incline Village/Crystal Bay citizens until the LAWSUIT was resolved. FlashVote would not buckle and appealed the injunction to the Supreme Court. The Fixer hit the limits of the General Manager's alleged $50,000 discretionary spending authority and needed an extra $25,000 (for starters) to keep his legal meter running and the unlawful LAWSUIT going. In order to do so, a

public meeting was required. The public would finally be informed. However, before that happened, on November 15, 2017, after a regularly scheduled Board Meeting, Chair Wong and the Fixer once again convened a closed Attorney-Client Session. This time there were witnesses when the Fixer told Trustee Dent that he could not attend due to an "alleged" conflict of interest, and Trustee Callicrate objected to any meeting being held that would violate Nevada Open Meeting Law. As a consequence, the second unlawfully convened meeting with Trustees Wong, Horan, Morris along with GM Pinkerton and other members of Senior Staff could not continue.

Shortly after, a citizen filed an Open Meeting Law Complaint. Through the OAG's in-depth investigation and the citizen's continued follow-up with additional recorded and written information, Trustees Wong, Horan and Morris' violation of the Open Meeting Law in April of 2017 was discovered and the Fixer's efforts at concealment along with his false statements to the Board, the Public, District Court and the OAG were revealed. The OAG stated: "After investigating the Complaint, the OAG determines that the Board violated the OML by failing to properly notice and approve the initiation of a lawsuit during a public meeting."

As for the Fixer's representations on behalf of the Board, the OAG stated:

"The Board argues that the authority to initiate the LAWSUIT was delegated to its General Manager and General Counsel through the Board's Policies and Practices, its Policy and Procedure Resolutions, and its retainer agreement with legal counsel. However, a careful reading of the noted documents fails to support the Board's claims."

Unfortunately, the OAG's findings of OML violations came too late as this unlawfully prosecuted lawsuit was ultimately settled (without the additional $25,000 the Fixer requested) but at a great cost:

1) The Fixer, a corrupt attorney, lined his and his law firm's pockets.
2) Our citizens were out $70,000 on an unlawful, meritless lawsuit.
3) FlashVote had to spend money defending an unlawful, meritless lawsuit.
4) Approximately 900 IV/CB citizens were deprived of using a good survey system to express their opinions

5) Trustees Dent and Callicrate were silenced as Trustees Wong, Horan and Morris used the FIXER as a legal shield to manufacture reasons to exclude their participation and oversight.
6) Wong bragged in her re-election campaign that she spearheaded the litigation, which we now know was both unlawful and unauthorized.
7) IVGID got NOTHING not even the non-existent customer data they claimed to have given to FlashVote. It wasn't even mentioned in the settlement. What they got was the ability to censor public opinion and the pleasure of crushing Trustees and businesses that challenge their corrupt activities.

2019/2020 Water and Sewer Utility Rate Study - A DISGRACE

At the January 23, 2019 Board of Trustees meeting, Director of Public Works Joe Pomroy presented the 2019/2020 Utility Rate Study. This Study provides the foundation for the Board to approve the District's annual water and sewer rates and other utility customer charges. Mr. Pomroy provided Staff's estimates of Revenues, Expenses, Capital Costs and Debt Service for the next five years. Based upon those estimates, he recommended a 4% increase in the Water and Sewer rates effective May 20, 2019. He also recommended that these rates continue to increase by 3.5% annually for the next four years. Additional customer charges for backflow testing, service calls and inspection will also be raised by an unstated amount along with a 5% increase to water and sewer connection fees.

According to the District, this Study is prepared to ensure fiscal responsibility and sustainability of service capacities by maintaining EFFECTIVE FINANCIAL POLICIES. If that is the dominant objective, this Study falls short.

For some time, we have been reporting that the Utility Fund is dangerously underwater and the appropriate maintenance and replacement of our vital infrastructure is in jeopardy. We have pointed to the District's inadequate working capital, the use of ratepayer money set aside to fund Phase II of the effluent pipeline being siphoned off to fund other projects and dare we say it: fraudulent accounting and reporting practices. The Board Packet Memorandum and the Study presented does not provide corrective measures to our concerns. In fact, with the addition of too many false statements to count, it raises more alarms.

First, the District has failed to comply with the appropriate level of working capital as required by Board Policy 19.1.0 and Board Practice 19.2.0. For your reference, the Policy and related Practice has two parts:

The first part is to have working capital in an amount that will cover 45 to 90 days of operating expenses; one year of interest on debt; and one year of depreciation, based on the average of the past three years. Based upon the 2018 audited

financial statements calculations for working capital should range between $4,000,000 and $4,900,000.

The second part is the accumulation of other resources. These other resources are the $2 million of ratepayer money collected annually to accumulate $23 million to fund the replacement of 6 miles of the effluent pipeline in State Route 28. This project is Phase II of the Effluent Pipeline. The Practice states: The Utility Fund may have "resources accumulated in support of Debt Service or the Multi-Year Capital Plan IN ADDITION to Working Capital since these needs extend beyond the measurement period of one year." According to Note 19 of the 2018 audited financial statements the commitments for Multi-Year projects approved by the BOT is $9,765,603 with the largest being $8,765,603 for Phase II of the Effluent Pipeline.

To be in compliance with both parts of the Practice would require the Utility Fund to have between $13,703,000 and $14,665,603. However, the working capital plus the cash equivalent long term investments reported in the 2018 audited financial statements amount to only $9,703,020. **This means the Utility Fund is short between $4,061,000 and $4,962,000. There isn't even adequate money to fund the previously approved capital projects.**

At the Meeting, Trustee Dent asked Mr. Pomroy if Board Policy and Practice 19.1.0 and 19.2.0 were being followed. Pomroy fielded the question to Director of Finance Eick. Mr. Eick stated the Utility Fund has $7,000,000 of working capital and it is more than ample. He apparently decided to pick and choose only the working capital portion of the Board practice and did not disclose any thing about the reserves required for multi-year projects. Mr. Dent asked for the calculation Staff used to comply with Policy 19.1.0 and Practice 19.2.0. Mr. Eick said he could not get it done until February 26, 2019. ***This calculation would take less than one hour to complete.*** Trustee Horan stated that the calculation must be done before the February 6th Board meeting. GM Pinkerton said it would be. Now let's face it, Mr. Eick was attempting to get this pushed off until after the February 6th meeting when the Board is scheduled to make changes to the Rate Study before approving new rates and setting the date for a public hearing.

ago with a 4% annual inflation rate and a start time of 2021. We can rest assured that construction cost inflation has far exceeded the estimate, yet Staff has not commissioned a new estimate.

However, Mr. Pomroy states Phase II could cost less than the $23,000,000 budgeted. He cites potential Grant support from the US Army Corp of Engineers ("USACE") or some savings from co-locating the pipeline with the Tahoe Transportation District's ("TTD") proposed bike path or "savings" if we don't have to replace ALL six miles of the PIPELINE.

Now for the Facts. The USACE 595 program has some remaining funds to be shared with six other states. IVGID lobbyist Marcus Faust has been on retainer for many years to secure this funding. Results have not materialized. At the meeting, we learned that perhaps a million dollars could be thrown our way. There, however, is a possibility that a USACE Grant may be obtained to assist in funding the wastewater pond lining which is not part of the Phase II pipeline. The lining for the wastewater pond, which is crucial to providing effluent storage in the event of pipeline failure or replacement, is also omitted from the Study. And so are the costs which according to engineering estimates range between $500,000 and $3,200,000. The TTD bike path co-location project will likely go nowhere as TTD's BUILD Grant application to the US Department of Transportation was not accepted. TTD must now wait for some future unknown funding program to surface. As for having savings of between $2,000,000 and $4,000,000 per mile of pipeline by not replacing it is quite a spectacular statement. Yes, you read that right. For every mile we don't replace, we will save money.

This brings us to what exactly is the condition of ALL six miles of pipeline and an informed timeline for replacement. The PICA contract to "scope out" the condition of the 6 miles of pipeline scheduled to be replaced was completed last October. However, according to Mr. Pomroy, he does not have the skill set to read the submitted information; PICA does not have an engineering license to produce an analysis; and a US engineering firm must be hired to read PICA's data and determine the condition of the entire 6 miles of Pipeline. We will have to wait for these results until this fall. Pomroy did state that 13,700 linear feet is in bad

condition but after two "scopes" we currently know nothing about the viability of the remaining 17,000 lf.

Now for the two big whoppers that should claim your attention. First, over the past few months the General Manager has come up with a new project called the Effluent Project. There are no project summaries for this invention, nor Board approval or discussion. According to GM Pinkerton, every expense he deems related to the entire effluent pipeline can be considered part of this Effluent Project. You will be surprised to learn that this Effluent Project has the same project number as Effluent Pipeline– Phase II. So, with a keystroke, any new or existing capital project can be labeled with the Phase II project number and be considered eligible for using the money collected from our ratepayers to specifically replace the remaining 6 miles of aging pipeline in SR 28.

For those who like to have accurate and complete cash flow statements this Study will leave you disappointed. There are three sheets which separately report the Budgeted Revenues and Expenses for the Water System, the Sewer System and the combined amount for both Systems. These pages provide ALL revenues along with expenditures for operations and debt service BUT EXCLUDE expenditures for capital projects. As such, any reader would assume that each system and their total are anticipated to have large excess cash flows of almost $5,000,000. Including capital projects of $980,000 for the Water System, $2,800,000 for the Sewer System and the $414,000 for shared projects would provide an accurate cash flow budget and be similar to the reporting in the State Budget. This appropriate and all-inclusive reporting would provide the reader with the actual cash flow or lack thereof planned for the new fiscal year. A reader could immediately see excess cash flow is less than $200,000. Considering there are no contingencies for unanticipated expenditures or any reserves or working capital to draw upon on, a contingency of only 1.6% on a Budget of $12,470,000 is fiscally irresponsible.

Was a rate study really done or was there a quick decision to raise water and sewer rates by 4% and then create numbers to back into a justification?

If this Rate Study is ultimately approved without addressing the working capital necessary to support a $600,000,000 infrastructure, then we are all worse off. AND when it ultimately comes time to replace the aging 6 miles of effluent pipeline, neither our ratepayer money collected to fund Phase II nor adequate reserves will be there. Trustees willing to approve this flawed Study and ignore its fallacies would be both negligent and irresponsible.

[Rev. 6/2/2018 3:18:03 PM--2017]

CHAPTER 195 - PARTIES TO CRIMES

NRS 195.010 Classification of parties to crimes. Parties to crimes are classified as:

1. Principals; and
2. Accessories.

[1911 C&P § 8; RL § 6273; NCL § 9957]

NRS 195.020 Principals. Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor, whether the person directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who, directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him or her.

[1911 C&P § 9; RL § 6274; NCL § 9958]

NRS 195.030 Accessories.

1. Every person who is not the spouse or domestic partner of the offender and who, after the commission of a felony, destroys or conceals, or aids in the destruction or concealment of, material evidence, or harbors or conceals such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony.
2. Every person who is not the spouse, domestic partner, brother or sister, parent or grandparent, child or grandchild of the offender, who, after the commission of a gross misdemeanor, harbors, conceals or aids such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a gross misdemeanor or is liable to arrest, is an accessory to the gross misdemeanor.
3. As used in this section, "domestic partner" means a person who is in a domestic partnership that is registered or recognized pursuant to chapter 122A of NRS, and that has not been terminated pursuant to that chapter.

[1911 C&P § 10; RL § 6275; NCL § 9959] — (NRS A 1959, 294; 2013, 1381; 2017, 294)

NRS 195.040 Trial and punishment of accessories.

1. An accessory to a felony may be indicted, tried and convicted either in the county where he or she became an accessory, or where the principal felony was committed, whether the principal offender has or has not been convicted, or is or is not amenable to justice, or has been pardoned or otherwise discharged after conviction. Except as otherwise provided in this subsection and except where a different punishment is specially provided by law, the accessory is guilty of a category C felony and shall be punished as provided in NRS 193.130. An accessory to a felony who is the brother or sister, parent or grandparent, child or grandchild of the principal offender and who is an accessory to a felony pursuant to subsection 1 of NRS 195.030 is guilty of a gross misdemeanor.
2. An accessory to a gross misdemeanor may be indicted, tried and convicted in the manner provided for an accessory to a felony and, except where a different punishment is specially provided by law, shall be punished by imprisonment in the county jail for not less than 30 days nor more than 6 months, or by a fine of not less than $100 nor more than $500, or by both fine and imprisonment.

[1911 C&P § 11; RL § 6276; NCL § 9960] — (NRS A 1959, 294; 1995, 1169; 2013, 1382)

Kevin Lyons

DATE	DAY OF THE WEEK	TIME	LOCATION	MEETING	ITEMS SLATED FOR CONSIDERATION
				2019	
03/13	Wednesday	6 p.m.	Chateau	Regular Board Meeting *(Trustee Callicrate out of the state through and including March 26, 2019)*	Operating Budget presentation Award construction contract for the Incline Park Improvements *(Consent Calendar)* Verbal presentation by representative(s) from Tahoe Prosperity Center
03/14	Thursday	6 p.m. to 8 p.m.	Chateau	Board Workshop *(Trustee Callicrate out of the state through and including March 26, 2019)*	Board Work Plan
03/18	Monday	6 p.m.	Chateau	Regular Board Meeting *(Trustee Callicrate out of the state through and including March 26, 2019)*	Capital Budget presentation CIP Tour Utility rate discussion
04/10	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Media services Tentative draft budget Utility rate hearing Review, discuss, and possibly approve the granting of a utility easement to NV Energy on Incline Beach Parcel (Requesting Staff Member: Director of Public Works Joe Pomroy Contract Awards: Incline Creek Restoration and Deck Railing at Rec. Center. Construction Contract award for the Water Reservoir Safety Improvements Follow up on beaches Punch Card promotions Kick off discussion regarding Ordinance 7/Titles 9 and 10 in the IVGID Code *(hold as a separate meeting?)*
05/01	Wednesday	6 p.m.	Chateau	Regular Board Meeting	CSMP
05/22	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Approve District budgets and Recreation Roll
06/19	Wednesday	6 p.m.	Chateau	Regular Board Meeting Trustee Callicrate out of country 06/04 to 06/30	
07/17	Wednesday	6 p.m.	Chateau	Regular Board Meeting	GM Employment Agreement
07/24	Wednesday				Review and approve District Indebtedness Report including the Five Year Capital Project Summary
07/31	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
08/14	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
08/28	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
09/11	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
09/25	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
10/09	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
10/30	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
11/13	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
12/11	Wednesday	6 p.m.	Chateau	Regular Board Meeting	

DATE	DAY OF THE WEEK	TIME	LOCATION	MEETING	ITEMS SLATED FOR CONSIDERATION

Items sitting in the parking lot (to be discussed but (a) not yet scheduled for a specific Regular Board Meeting) or (b) a future Board not on this calendar
RFID Picture Passes – Item for next Strategic Plan or three years from now – software not available nor is infrastructure/hardware
TRPA EIS Contract at Diamond Peak
WCSD Joint Agreement
Accept grant for the Burnt Cedar Beach Water Quality Improvements Project
Contract Award – Championship Golf Course Creek Restoration
Contract Award – Mountain Golf Course Restrooms