



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.

Incline Village General Improvement District

Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

www.yourtahoeplace.com

NOTICE OF MEETING

Agenda for the Board Meeting of February 6, 2019 - Page 2

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. – **pages 6 - 7**
 - 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 – **pages 8 - 13**
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) – **pages 14 - 23**

NOTICE OF MEETING

Agenda for the Board Meeting of February 6, 2019 - Page 3

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) – **pages 24 - 32**
3. Review, discuss, and possibly 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) – **pages 33 - 208**
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) – **pages 209 - 410**

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) – **pages 411-415**

NOTICE OF MEETING

Agenda for the Board Meeting of February 6, 2019 - Page 4

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](#))

NOTICE OF MEETING

Agenda for the Board Meeting of February 6, 2019 - Page 5

- 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.
- M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (*for possible action*) – **pages 540 - 541**
- 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.

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Gerald W. Eick CPA CGMA
Director of Finance

SUBJECT: 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.

STRATEGIC PLAN: Long Range Principle #2 - Finance

DATE: January 23, 2019

I. RECOMMENDATION

Staff recommends that the Board of Trustees makes 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 Statutes. The time of the meeting is expected be 6:00 p.m. or as determined by the Board of Trustees.

II. DISTRICT STRATEGIC PLAN

Long Range Principle #2 – Finance – Comply with State and Federal regulations.

- Comply with Nevada Revised Statutes and Administrative Code requirement for the budget process and document content.

III. BACKGROUND

The Nevada Revised Statutes (NRS) requires that the public hearings of the District's budget be held between the third Monday in May and by May 31. The Board of Trustees has indicated a desire to incorporate this meeting into the regular meeting schedule. Staff will also ask the Board to adopt, as final, the Operating Budget for the Fiscal Year 2019/2020 from the tentative budget (Form 4404LGF) as presented. This includes the Recreation and Beach Facility Fees.

Review, discuss, and possibly set -2-
Date and Time for Public Hearing
for the 2019/2020 Budget and Recreation
Roll for Wednesday, May 22, 2019, 6:00 p.m.

January 23, 2019

The calendar, as dictated by the NRS, is as follows:

DATES	ACTION
April 15, 2019	Tentative budget to be filed with the Department of Taxation.
May 8, 2019	Earliest date for notice of public hearing. The NRS reads "...notice of public hearing for tentative budget shall be published not more than 14 days or less than 7 days prior to the date set for the hearing."
May 22, 2019	Tentative Budget hearing for general improvement special district and all other districts. (Note: Staff will also ask the Board to adopt the final budget the same day).
June 1, 2019	The final budget shall be adopted on or before June 1.

IV. ALTERNATIVES

The Board of Trustees could designate another date between May 20 and May 31 for the required meeting.

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

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

SUBJECT: 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

DATE: January 25, 2019

I. RECOMMENDATION

That the Board of Trustees makes 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"

II. DISTRICT STRATEGIC PLAN

The Utility Rate Study supports 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 improvement and debt management.* Under Objectives for 2018-20, it specifically states, *Prepare a five-year projection of financial results for each audited fund for operations, capital improvement and debt service as a part of budget deliberations.*

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-

January 25, 2019

III. BACKGROUND

At the January 23, 2019 District Board of Trustees Meeting, Staff conducted a Utility Rate Study presentation that presented the next five years of operating and capital expenses and the projected revenue needs to provide sufficient and stable revenue during that time period. The Utility Rate Study from the January 23, 2019 Board of Trustees Meeting is posted on the IVGID website and the reader can review that document and listen to the presentation through the Livestream web services. The purpose of this memorandum is to set the date for the public hearing and to publish the Ordinance 2 and Ordinance 4 amendments for viewing by the public prior to the Hearing.

The proposal is to increase water rates by 4.0% and sewer rates by 4.0% for a total utility rate increase of 4.0%. The utility rates are scheduled for an average 3.5% increase for the next five years as detailed in the Five Year Utility Rate Study that was presented to the Board of Trustees on January 23, 2019.

The new water and sewer charges, connection fees, and miscellaneous fee schedules will be prepared separately from the ordinances and passed by individual resolutions. This is in anticipation of the water and sewer ordinances being incorporated into the new IVGID code. It is best practice to not include rates and fees in a governmental code. The full ordinance and all rate and fee schedules will be published and available to the public a minimum of thirty days in advance of the Public Hearing and will be included in the April 10, 2019 Board Packet in its entirety.

District Staff will publish the required notices in compliance with NRS 318.199 and have documents available for viewing by the public at the Administration Office, Public Works Office, and posted on the IVGID website. Customers will also be notified through the PW News that is made available to every utility account.

IV. FINANCIAL IMPACT AND BUDGET

The proposal is to increase water rates by 4.0% and sewer rates by 4.0% for a total utility rate increase of 4.0%. The utility rates are scheduled for an average 3.5% increase for the next five years to meet the projections presented in this memo.

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

-3-

January 25, 2019

In 2018-19, total water and sewer revenues for Public Works are budgeted to be \$11.85 million and are proposed to be \$12.29 million in 2019-20 under this rate study. This is an increase in revenues of \$440,000 from increased commodity sales, additional users, and from the rate increase.

The utility rates are calculated from a rate model that determines the revenue needs to meet operating and capital expenses while maintaining prudent reserves. Once the revenue target is established, the water and sewer rates are adjusted to generate that revenue in the most equitable way possible. The revenue is also balanced among the various rate components to pay for fixed, variable, and capital components.

The reserve balance is a critical fund to be managed in Public Works. The amount of the bonding will be adjusted to insure the reserve fund remains at a prudent balance while also considering the costs of borrowing, the economic conditions in Nevada, and the susceptibility of the funds. The contributions to the reserve will be \$3.1 million over the next five years.

The reserve fund is set by Board Policy 7.1.0 and is currently a target value of \$1.88 million. In the five-year period of this rate study, reserves will be above target policy levels while the District accumulates additional savings to fund the Effluent Export Project. The net position for the utility fund on June 30, 2018 from page 30 of the Comprehensive Annual Financial Report is \$10,091,000 (NET POSITION; Unrestricted). The Utility fund meets this policy value.

The District also has Budgeting and Fiscal Management Level of Working Capital Practice 19.2.0 that is established to maintain Working Capital in the Utility Enterprise Fund. The definition of target amounts for Working Capital is measured as follows.

- Operations – 45 to 90 days of operating expenses. Operating expense excludes depreciation and interest
- Utilities 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.
- Capital Expenditure – up to 1 year of a 3 year average depreciation

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

Table 1 presents two scenarios for working capital based on the fiscal year end results of 2018-19. All numbers have been rounded to \$1000 for clarity.

Table 1 – Working Capital Worksheet

Item	YE 2018-19	Working Capital with 45 Days of Operating Expenses	Working Capital with 90 Days of Operating Expenses
Operational Expense 2019-20	\$7,140,000	\$881,000	\$1,761,000
Utilities Debt Service 1 Year	\$134,000	\$134,000	\$134,000
1 year average depreciation	\$2,950,000	\$2,950,000	\$2,950,000
Sum		\$3,965,000	\$4,845,000

The Utility Fund working capital on June 30, 2018 is \$6,129,000 from page 30 of the Comprehensive Annual Financial Report, total current assets minus total current liabilities.

V. BID RESULTS

Not applicable.

VI. ALTERNATIVES

Not set a date for the public hearing and keep Ordinance 2 and Ordinance 4 the same and not increase water and sewer rates. This will have a long term negative impact on the assets and financial health of the District. Water and sewer systems have regulatory oversight so the District must meet operation and infrastructure standards regardless of available funds.

VII. COMMENTS

The applicable Nevada Revised Statute is as follows:

NRS 318.199 Rates, tolls and charges for sewerage or water services or products: Schedules; public hearings; adoption of resolution; action to set aside resolution.

1. The board of trustees of any district organized or reorganized under this chapter and authorized to furnish sanitary sewer facilities pursuant to NRS 318.140 or to furnish water facilities pursuant to NRS 318.144 shall establish schedules showing all rates, tolls or charges for services performed or products furnished.
2. Whenever the board of trustees proposes to change any individual or joint rate, toll, charge, service or product, or any individual or joint practice which will affect any rate, toll, charge, service or product, the board of trustees shall hold public hearings after 30 days' notice has been given to all users of the service or product within the district.
3. Notice shall be given by publication in a newspaper published in the county and if no such newspaper is published, then a newspaper published in this state which has a general circulation in the county. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear and the type used in the headline of such notice shall not be smaller than 18 point.
4. All users of the service or product shall be afforded a reasonable opportunity to submit data, views or arguments orally or in writing at the place, date and time specified in the notice, or at any subsequent place or time to which the hearing may be adjourned.
5. If, after public hearing, the board of trustees determines that the proposed action is required, the board shall adopt a resolution establishing the new or changed rates, tolls, charges, services to be performed or products to be furnished.

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

-6-

January 25, 2019

6. Within 30 days immediately following the effective date of such resolution, any person who has protested it may commence an action in any court of competent jurisdiction to set aside the resolution.
7. Within 30 days after the effective date of the resolution, the secretary of the district shall file a copy of the new schedules in the office of the district. The schedules shall be made available to any user of the service or product.

(Added to NRS by 1977, 541)

VIII. BUSINESS IMPACT

This item is a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, but it does not impose a direct and significant economic burden on a business, or directly restrict the formation, operation or expansion of a business, and therefore does not require a Business Impact Statement.

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

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

Michael Lefrancois, P.E.
Senior Engineer

SUBJECT: 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.

DATE: January 24, 2019

I. RECOMMENDATION

Staff recommends that the Board of Trustees:

1. Approve a grant of Easement to NV Energy on District Properties APN: 128-352-01 to construct, operate, add to, modify, maintain and remove communication facilities and electric line systems for the distribution of electricity underground.
2. Authorize Staff to execute the easement documents upon review by District Counsel.

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.

III. BACKGROUND

NV Energy is requesting the District grant an easement at the Mountain Golf Course property – 687 Wilson Way, APN: 128-352-01 to provide additional power capacity in support of planned equipment replacement by Verizon on the existing Cell tower and also provide additional future capacity for the Clubhouse.

Similar easements were granted in 2008, 2014 and 2018 for modifications at Burnt Cedar Beach and Mercury Ct to allow improvements to stabilize power and improve infrastructure.

The proposal before the Board of Trustees will allow for the installation of a new electrical transformer on District property adjacent to the existing installation. This work will occur outside of the existing area leased by Verizon. This transformer will support District facilities as well as the existing cell tower. Work planned separately by Verizon is permitted under their existing lease agreement.

The existing transformer and underground utilities from Wilson Way to the clubhouse were constructed on or about 1970 with the construction of the existing clubhouse. The cell tower was added to the circuit with Board approval on or about 2011.

The District followed the notification requirements in Resolution 1475, A Resolution Establishing Policy for the Granting of Easements Across District Property, that requires written notice be given to owners of property within three hundred (300) feet of the District property at least 30 days prior to the date the request will be considered. The notice was mailed to 140 parcel owners. The notice and effected area is provided as attachments to this memo. The easement document is also included as an attachment.

IV. FINANCIAL IMPACT AND BUDGET

NV Energy will be required to prepare and record all easement documents. NV Energy is responsible for construction of all improvements. There is no financial impact to the District.

V. ALTERNATIVES

No alternatives provided. The District works cooperatively with public agencies and utility companies to provide necessary easements and encroachments to facilitate providing public services to the community.

VI. COMMENTS

Providing NV Energy access to maintain this infrastructure is beneficial to the communities of Incline Village and Crystal Bay as well as the Incline Village General Improvement District as it helps ensure the reliable delivery of electrical power. The existing utility service is 48 years old and of limited capacity. This upgrade will have both direct and indirect benefits to the District and its customers.

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.

APN(s): 128-352-01

The undersigned hereby affirms that this document, including any exhibits hereby submitted for recording does not contain the personal information of any person or persons (Per NRS 239B.030)

**RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:**

Land Resources
NV Energy
P.O. Box 10100 MS S4B20
Reno, NV 89520

GRANT OF EASEMENT

Incline Village General Improvement District, a Nevada quasi-municipal corporation and political subdivision of the State of Nevada, (“Grantor”), for One Dollar (\$1.00) and other good and valuable consideration – receipt of which is hereby acknowledged – and on behalf of itself and its successors and assigns, grants and conveys to Sierra Pacific Power Company, a Nevada corporation, d/b/a NV Energy (“Grantee”) and its successors and assigns a perpetual right and easement:

1. to construct, operate, add to, modify, maintain and remove communication facilities and electric line systems for the distribution of electricity underground, consisting of cables, conduit, duct banks, manholes, vaults, transformers (aboveground or underground), service boxes/meter panels (aboveground or underground), cabinets (aboveground or underground), bollards (aboveground), and other equipment, fixtures, apparatus, and improvements (“Utility Facilities”) upon, over, under and through the property legally described in Exhibit A attached hereto and by this reference made a part of this Grant of Easement (“Easement Area”);
2. for ingress and egress to, from, over and across the Easement Area for the allowed purposes defined in numbered paragraph 1 of this document and for all other activities permitted by this agreement;
3. to remove, clear, cut or trim any obstruction or material (including trees, other vegetation and structures) from the surface or subsurface of the Easement Area as Grantee may deem necessary or advisable for the safe and proper use and maintenance of the Utility Facilities in the Easement Area.

Grantee will be responsible for any damages, proximately caused by Grantee negligently constructing, operating, adding to, maintaining, or removing the Utility Facilities, to any tangible, personal property or improvements owned by Grantor and located on the Easement Area on the date Grantor signs the Grant of

APN(s): 128-352-01
RW# RW-1150-2018
Proj. # 3002485603
Project Name: E-687 WILSON-E-COMM-VERIZON WIRELESS
GOE_DIST (Rev. 8/2017)

Easement. However, this paragraph does not apply to, and Grantee is not responsible for, any damages caused when Grantee exercises its rights under numbered paragraph 3 above.

Grantor covenants for the benefit of Grantee, its successors and assigns, that no building, structure or other real property improvements will be constructed or placed on or within the Easement Area without the prior written consent of Grantee, such structures and improvements to include, but not be limited to, drainage, trees, bridges, and signage. Grantee and Grantor must document Grantee's consent by both signing Grantee's standard, recordable use agreement. Grantor retains, for its benefit, the right to maintain, use and otherwise landscape the Easement Area for its own purposes; provided, however, that all such purposes and uses do not interfere with Grantee's rights herein and are in all respects consistent with the Grantee's rights herein, Grantee's electrical practices, and the National Electrical Safety Code.

To the fullest extent permitted by law, Grantor and Grantee waive any right each may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Grant of Easement. Grantor and Grantee further waive any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

[signature page follows]

APN(s): 128-352-01
RW# RW-1150-2018
Proj. # 3002485603
Project Name: E-687 WILSON-E-COMM-VERIZON WIRELESS
GOE_DIST (Rev. 8/2017)

Exhibit A

A portion of the Northwest quarter of Section 10, Township 16 North, Range 18 East, M.D.M., Washoe County, Nevada; situated within that Parcel of land shown as Parcel F on the Map for Incline Village Unit No. 3, recorded as File Number 147003 on June 25, 1969, Official Records of Washoe County, Nevada.

Notwithstanding the foregoing, with respect to the Utility Facilities, Easement Area shall be reduced to an area ten (10) feet in width, being five (5) feet on each side of the centerline of the Utility Facilities after same are installed in connection with **Sierra Pacific Power Company Project ID 3002485603** The easement area around any Additional Utility Facilities shall be reduced to three (3) feet in all directions around the perimeter of the Additional Utility Facilities, as originally installed in connection with **Sierra Pacific Power Company Project ID 3002485603**.

APN(s): 128-352-01
RW# RW-1150-2018
Proj. # 3002485603
Project Name: E-687 WILSON-E-COMM-VERIZON WIRELESS
GOE_DIST (Rev. 8/2017)

A

PARKING

EXISTING UNDERGROUND SERVICE FROM WILSON WY

CLUB HOUSE



NEW TRANSFORMER

EXISTING BUILDING

PATH

(E) 233± 2-PHASE PRIMARY

(P) TS49826
100 KVA
120/240
STK.#81-3547
N-36 EXTENSION
REQUIRED
STK.#24-0480

(P) 13'± 2-1/0
IN 1-4" C

(E) 611450
611450
75 KVA
LB

(E) 15'± 750TX
IN 1-4" C AND
1-4" C SPARE
TO NEW
400A PANEL
687 WILSON WAY

(R) 200A
PANEL

12835201
687 WILSON WAY

SERVICE TO MAINT. SHOP



INCLINE VILLAGE GENERAL IMPROVEMENT DIST
893 SOUTHWOOD BLVD
INCLINE VILLAGE, NV 89451

December 17, 2018

To Whom It May Concern:

This written notice has been sent to you from NV Energy as a requirement of the Incline Village General Improvement District (IVGID) to notify you of our request for a utility easement across IVGID lands at 687 Wilson Way. The IVGID Board is expected to consider this easement modification no sooner than 30-days from the date of this notice at a regularly scheduled board meeting.

1. Granting of this easement will be considered by the IVGID Board of Trustees.
2. District policy requires written notice to owners of property within three hundred feet of the affected District property
3. Meeting and agenda updates can be found at: www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-andagendas

Should you have any questions regarding NV Energy's request affecting District property, please contact NV ENERGY at 775-834-7116, or IVGID Engineering Division at 775-832-1267.

Best Regards,

Charlene Schlager
Charlene Schlager
Epic Wireless
Authorized Representative for Verizon Wireless
(773)732-5497
Charlene.schlager@epicwireless.net

M E M O R A N D U M

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Gerald W. Eick, CPA CGMA
Director of Finance

SUBJECT: Review, discuss, comment, and possibly adopt a Popular Report format under 2018 Board Work Plan

STRATEGIC PLAN: Long Range Principle #2 - Finance

DATE: January 25, 2019

I. RECOMMENDATION

Staff recommends a popular report format that includes:

- 1) A cover narrative to identify objectives or accomplishments over the period reported
- 2) Comparative Condensed Statements of Net Position and Activities
- 3) Comparative Years' Revenue, Expense and Other Expenditures by Natural Classification
- 4) Graphic History of the Facility Fee
- 5) Graphic History of Capital Expenditures

A sample report has been generated utilizing the data from the District's 2018 Audit Report. This data is from content being used in the IVGID Quarterly. Past Board of Trustees meetings has provided input and ideas. This is another iteration for review, discussion or comment on this format. If acceptable, the Board of Trustees can direct Staff to finalize and prepare the report with complete narrative, data and graphics for distribution. The Board of Trustees are encouraged to comment on the objectives or areas of accomplishment as well as the effectiveness of the financial presentation.

II. DISTRICT STRATEGIC PLAN

“Utilize Annual and Interim financial reports to build understanding of the different aspects between operations, capital improvement and debt service.”

D. Actively manage planning and financial reporting to inform decision makers to sustain a strong financial base for operations, while increasing net assets, and maintaining care and condition of capital assets and infrastructure.

- 1. Prepare standard format and popular reporting presentations of financial position and results of operations to inform users about budget to actual results, capital project status and relevant performance measures.*
- 2. Utilize the District’s Financial Transparency website to provide ready access to a variety of reports and information to support a greater level of detail than standard reports allow.*

E. Analyze and evaluate the post-2020 effects of proposed changes to Government Accounting Standards Board Pronouncements that could require pre-planning or system revisions to be implemented to comply with the adoption by the State of Nevada for local units of government.

III. BACKGROUND

During 2017, the Board of Trustees, General Manager, and Staff opened the discussion of developing a series of popular reports to provide an alternative way to present financial and other information from those prescribed by the State of Nevada Department of Taxation forms and the annual audit report. By avoiding a prescribed format, the desire was to give a quick overview of the District’s financial status. If more information was desired, a user could then refer to the multiple other forms that exist including the Financial Transparency website.

The General Manager’s Committee reviewed examples from other agencies. Their 2017 status report was updated to reflect developing this example for discussion. Popular Reporting was included in the Board Work Plan for 2018. It is anticipated the first report would be issued with the completion of the audit report for June 30, 2018.

The Board of Trustees reviewed sample reports in July and December 2018 which resulted in several suggestions including a request to present costs by venue.

On September 12, 2018, the Governmental Accounting Standards Board released a Preliminary View on proposed changes to the government reporting model for implementation in 2020. One of the proposals is to add supplemental information which provides the cost of "Natural Classifications", since activity level information is so highly aggregated. This concept fits perfectly with the Board's request for venue cost information. By using this concept, we would be developing a format that can be validated against audited information. We have prepared one for each of 2017 and 2018 to support the comparative condensed statements.

An objective of this process was to have a comparison to budget. The government wide financial statement are not prepared on the same basis of accounting used for budgetary purposes. Fund level financial information is the same as budget preparation. The narrative to the popular report acknowledges the differences and suggests those users needing that level of detail can utilize the District's website. This seems a reasonable compromise to achieve summary information, while still providing information on how to obtain greater detail.

IV. FINANCIAL IMPACT AND BUDGET

The assignment of this reporting has been added to the duties of the Director of Finance. The Communication Coordinator's time is also needed to assemble these formats. However, no specialty software or other costs appear necessary to be incurred. The reports will be posted on the website and/or may be included in the IVGID Quarterly. The reports should not require significant additional expense.

V. ALTERNATIVES

Popular Reporting has taken many forms and formats based on the needs of entities and the users they are trying to reach. The Government Finance Officers Association has issued a best practice document and has a program for achievement in reporting. The District intent is only to use this process as another way to provide information. Our format uses a combination of summary information, charts, and a short narrative. These are the common elements for popular reporting. The District is not using a format that meets all the standards because we have different objectives.

VI. COMMENTS

Consistency is a fundamental of financial reporting. However, the needs for format of our reporting will likely evolve over time. The process that is being developed is based on sources that can be sustained and cross checked. Staff focused on data from the annual audit, the budget process, and monthly financial statements. As content evolves, Staff expects to keep the sources limited to already published information, rather than new information that cannot be found anywhere else. While each report page needs to stand alone in what is presented, it is clear some sort of introduction or other narrative or footnotes are helpful to alert users of the purpose and the source of information. The narrative portion will be unique to each report since it will address objectives as well as accomplishments.

IVGID SUMMARY

IVGID Mission Statement

The Incline Village General Improvement District delivers exemplary recreational experiences and provides the highest level of water, sewer, and solid waste services while striving for fiscal and environmental sustainability.

To accomplish this Mission the District's finances focus on sustainability and performance across:

- **Service Levels** – through Performance Measurement and Management
- **Care and Condition of Equipment and Infrastructure** – through comprehensive assessment, maintenance, and replacement planning, and implementation for Capital Projects
- **Financial Resources** – through comprehensive budgeting to provide a proper flow of resources for operations, capital assets and debt service

Capital Project Activity

The District continues its progress of maintaining its capital assets, repaying bonds, and operating within budget. The level of capital project activity changes each year based on need, and the ability to complete projects.

Overview of Financial Condition

We have included a Condensed Statement of Net Position and Activities from our audit report to provide an overview of financial condition. Cash and Investments represent resources ready to provide services and support current and future capital projects. As you can see the District has a considerable investment in equipment and infrastructure, which needs regular attention for care and condition.

Operations of the District

Operations of the District focus on performance measurement and management through budgeted flow of resources at a fund level. The Statement of Activities is more aggregated and considers expenses not expenditure. Therefore, depreciation expense is reported. By contrast we have also reported as memorandum the expenditures for capital projects and repayment of bonds.

Equipment & Infrastructure

Care and Condition of our equipment and infrastructure is accomplished by regular maintenance as part of operations. However, its availability for service is derived from an ongoing plan for refurbishment and replacement. Utility User Fees provide resources for that function's asset replacement. For Community Services and the Beach, a significant resource for capital replacement is the Facility Fee. We have presented the components of the fee since 2009. We have also given the history of District-wide capital expenditure over that same time.

Financial Transparency

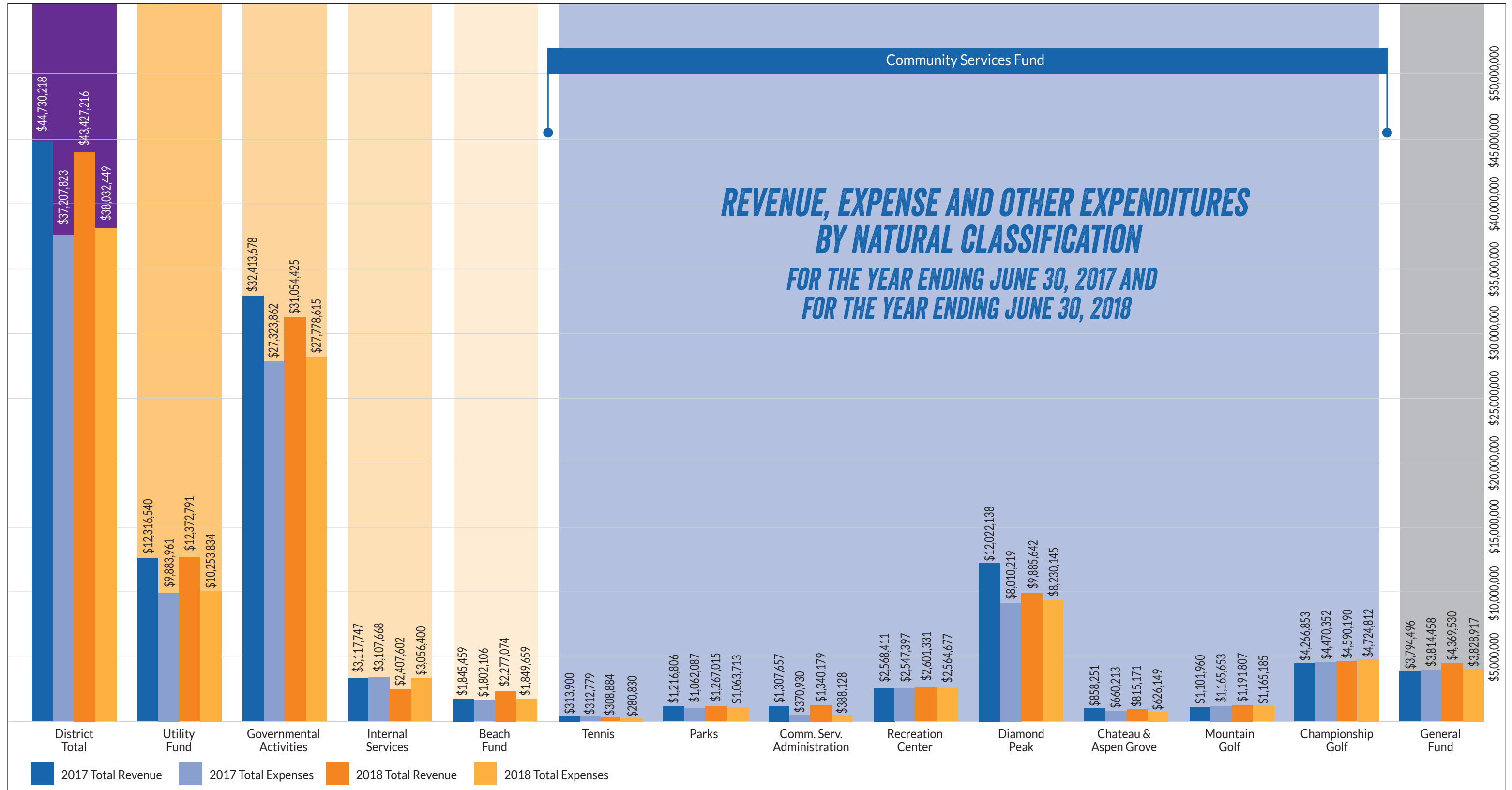
IVGID issues a variety of financial reports and materials, each with its intended purpose. The District has issued this report to provide a condensed view of our financial information. The information is based on our annual audit report and details posted through OpenGov. For more details refer our Financial Transparency page at yourtahoeplace.com.

Condensed Statement of Net Position as of June 30, 2018 and 2017

	2018	2017
ASSETS		
Cash & Investments	\$30,206,365	\$31,624,310
Other Operating Assets	3,973,834	3,365,345
Restricted Deposits	734,400	486,586
Capital Assets at Cost	236,680,161	226,437,454
Less Accumulated Depreciation	(112,463,123)	(107,233,996)
Total Assets	\$159,131,637	\$154,679,699
LIABILITIES		
Accounts Payable	\$1,870,756	\$1,899,613
Other Operating Liabilities	1,945,521	1,934,879
Unearned Revenue	2,503,940	1,732,466
Bonds Payable	6,959,620	8,655,712
Total Liabilities	\$13,279,837	\$14,222,670
NET POSITION		
Net Invested in Capital Assets	\$117,257,418	\$110,547,746
Restricted	492,381	485,586
Unrestricted	28,102,001	29,423,697
Total Net Position	\$145,851,800	\$140,457,029

District-wide Statement of Activities for the Years Ending June 30, 2018 and 2017

	2018	2017
REVENUES		
Facility Fee	\$6,771,522	\$6,749,251
Property Tax	1,546,575	1,476,148
State Tax	1,637,250	1,484,830
Miscellaneous	493,000	472,129
General Revenues	10,448,347	10,182,358
User Charges	32,203,807	33,990,296
Capital Grants	758,062	539,124
Other Resources	17,000	18,440
District Total Revenues	43,427,216	44,730,218
EXPENSES		
General Government	3,828,917	3,814,458
Community Services	19,043,639	18,599,633
Beach	1,849,659	1,802,103
Internal Services	3,056,400	3,107,668
Utilities	10,253,834	9,883,961
District Total Expenses	38,032,449	37,207,823
Change in Net Position	\$5,394,767	\$7,522,395



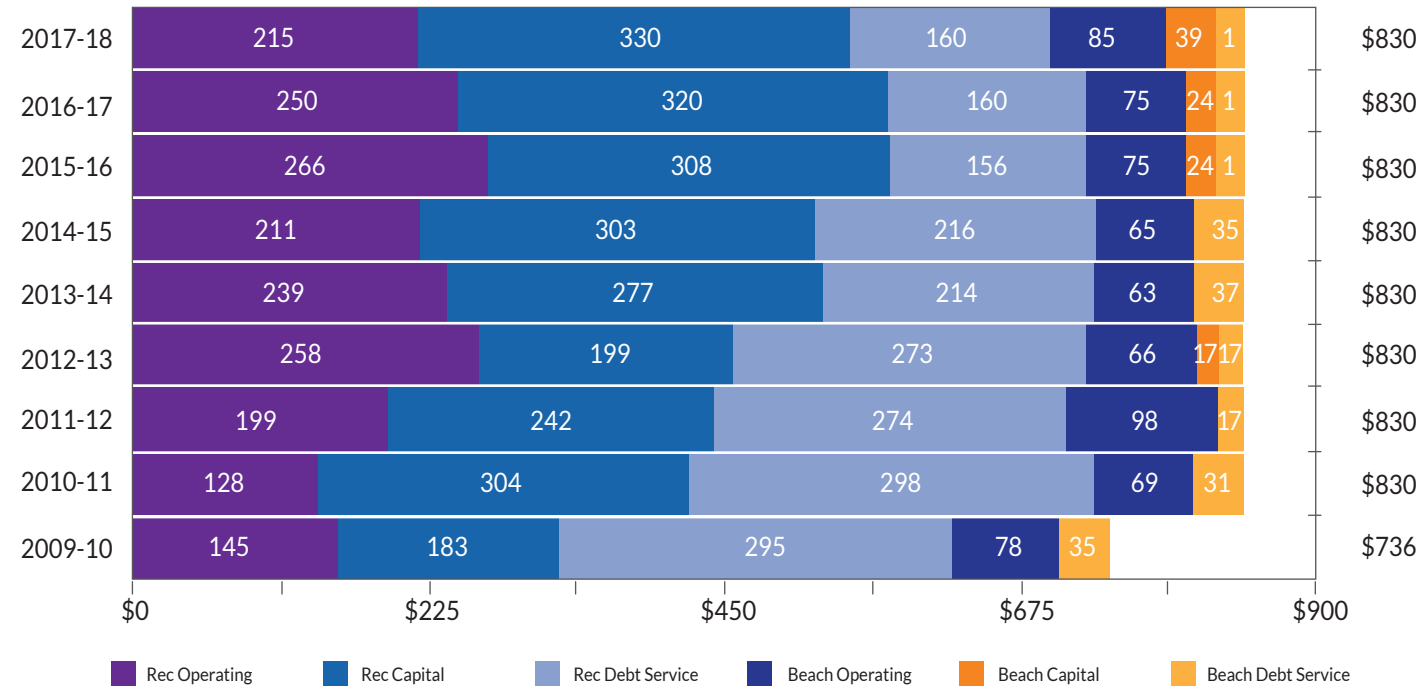
REVENUE, EXPENSE AND OTHER EXPENDITURES BY NATURAL CLASSIFICATION FOR THE YEAR ENDING JUNE 30, 2017

	General Fund	Community Services Fund								Beach Fund	Internal Services	Governmental Activities	Utility Fund	District Total
		Championship Golf	Mountain Golf	Chateau & Aspen Grove	Diamond Peak	Recreation Center	Comm. Serv. Administration	Parks	Tennis					
Revenue														
Charges for Services	\$1,177,200	\$3,542,663	\$627,986	\$387,701	\$11,326,968	\$1,274,149	\$(573,542)	\$67,660	\$166,577	\$1,065,018	\$3,114,747	\$22,177,127	\$11,813,169	\$33,990,296
Operating Grants	1,440	-	-	-	-	17,000	-	-	-	-	-	18,440	-	18,440
Capital Grants	-	-	-	-	-	-	-	113,615	-	-	-	113,615	425,509	539,124
Property Taxes	1,476,148	-	-	-	-	-	-	-	-	-	-	1,476,148	-	1,476,148
State Shared Taxes	1,484,830	-	-	-	-	-	-	-	-	-	-	1,484,830	-	1,484,830
Facility Fees	-	679,378	441,914	466,523	605,662	1,284,985	1,391,138	957,600	147,323	774,728	-	6,749,251	-	6,749,251
Investment Income	51,680	-	-	-	(3,500)	-	27,109	-	-	6,077	2,476	83,842	60,132	143,974
Sales of Assets	-	40,812	-	4,027	5,958	(7,723)	62,952	5,510	-	(364)	524	111,696	17,730	129,426
Miscellaneous & Transfers	(396,802)	4,000	32,060	-	87,050	-	400,000	72,421	-	-	-	198,729	-	198,729
Total Revenue	3,794,496	4,266,853	1,101,960	858,251	12,022,138	2,568,411	1,307,657	1,216,806	313,900	1,845,459	3,117,747	32,413,678	12,316,540	44,730,218
Expense														
Salaries and Wages	1,819,919	1,347,782	370,994	87,544	2,636,401	1,053,587	144,286	311,433	142,399	733,265	1,283,941	9,931,551	2,480,611	12,412,162
Benefits	781,966	373,143	101,500	45,546	754,107	318,231	45,185	86,971	24,178	205,192	618,679	3,354,698	1,077,836	4,432,534
Services & Supplies	1,001,782	2,208,242	545,471	365,488	3,420,090	854,075	164,881	422,630	95,792	648,804	1,193,160	10,920,415	3,225,406	14,145,821
Interest expense, net	-	24,495	-	23,383	83,417	311	-	397	173	841	-	133,017	154,186	287,203
Depreciation	210,791	516,690	147,688	138,252	1,116,204	321,193	16,578	240,656	50,237	214,004	11,888	2,984,181	2,945,922	5,930,103
Total Expenses	3,814,458	4,470,352	1,165,653	660,213	8,010,219	2,547,397	370,930	1,062,087	312,779	1,802,106	3,107,668	27,323,862	9,883,961	37,207,823
Changes in Net Position	\$(19,962)	\$(203,499)	\$(63,693)	\$198,038	\$4,011,919	\$21,014	\$936,727	\$154,719	\$1,121	\$43,353	\$10,079	\$5,089,816	\$2,432,579	\$7,522,395
Memo for Fiscal Year														
Capital Expenditures	\$148,435	\$928,012	\$120,828	\$161,162	\$1,375,029	\$574,838	\$111,792	\$312,527	\$49,022	\$256,161	\$-	\$4,037,806	\$4,307,522	\$8,345,328
Principal Payments	\$-	\$156,277	\$-	\$149,184	\$806,650	\$1,898	\$-	\$2,531	\$1,099	\$5,361	\$-	\$1,123,000	\$482,230	\$1,605,230

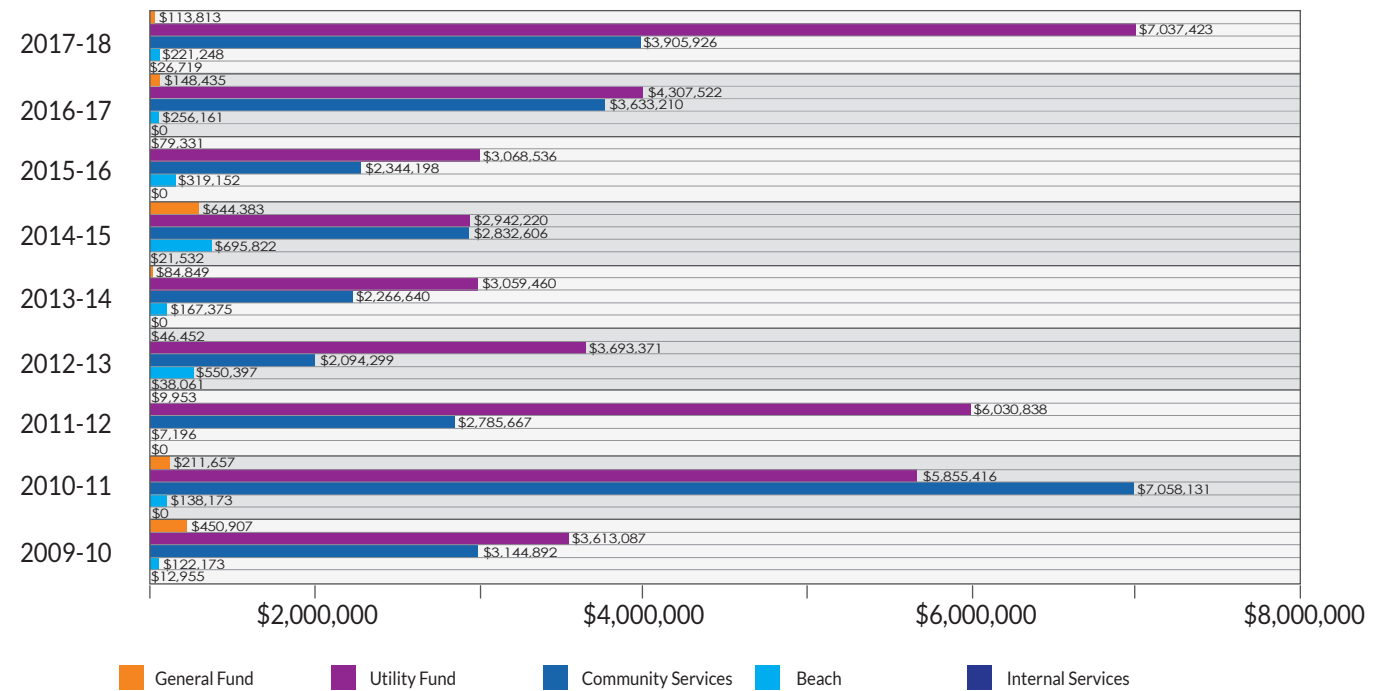
REVENUE, EXPENSE AND OTHER EXPENDITURES BY NATURAL CLASSIFICATION FOR THE YEAR ENDING JUNE 30, 2018

	Community Services Fund										Beach Fund	Internal Services	Governmental Activities	Utility Fund	District Total
	General Fund	Championship Golf	Mountain Golf	Chateau & Aspen Grove	Diamond Peak	Recreation Center	Comm. Serv. Administration	Parks	Tennis						
Revenue															
Charges for Services	\$1,094,000	\$3,765,419	\$630,214	\$355,696	\$9,165,975	\$1,289,953	\$(758,481)	\$132,815	\$145,197	\$1,266,613	\$3,190,849	\$20,278,250	\$11,925,557	\$32,203,807	
Operating Grants	-	-	-	-	-	17,000	-	-	-	-	-	17,000	-	17,000	
Capital Grants	-	-	-	-	401,353	-	-	156,775	-	-	-	558,128	199,934	758,062	
Property Taxes	1,546,575	-	-	-	-	-	-	-	-	-	-	1,546,575	-	1,546,575	
State Shared Taxes	1,637,250	-	-	-	-	-	-	-	-	-	-	1,637,250	-	1,637,250	
Facility Fees	-	795,437	505,878	458,325	220,978	1,293,131	1,404,199	957,571	163,687	972,316	-	6,771,522	-	6,771,522	
Investment Income	89,960	-	-	-	23,220	-	46,083	-	-	2,288	13,571	175,122	77,280	252,402	
Sales of Assets	(288)	29,334	17,769	1,150	2,600	1,247	3,378	19,854	-	857	3,182	79,083	50,020	129,103	
Miscellaneous & Transfers	2,033	-	37,946	-	71,516	-	645,000	-	-	35,000	(800,000)	(8,505)	120,000	111,495	
Total Revenue	4,369,530	4,590,190	1,191,807	815,171	9,885,642	2,601,331	1,340,179	1,267,015	308,884	2,277,074	2,407,602	31,054,425	12,372,791	43,427,216	
Expense															
Salaries and Wages	1,848,640	1,450,745	327,821	80,096	2,767,963	1,093,852	144,815	332,157	120,151	748,538	1,309,713	10,224,491	2,505,990	12,730,481	
Benefits	803,841	378,678	88,958	38,460	847,817	319,199	41,518	71,527	19,854	182,791	611,998	3,404,641	1,116,230	4,520,871	
Services & Supplies	933,722	2,226,279	555,392	330,241	3,408,547	819,054	171,165	414,614	88,525	688,417	1,124,370	10,760,326	3,517,520	14,277,846	
Interest expense, net	-	20,900	-	19,951	41,446	253	-	339	148	717	-	83,754	140,463	224,217	
Depreciation	242,714	648,210	193,014	157,401	1,164,372	332,319	30,630	245,076	52,152	229,196	10,319	3,305,403	2,973,631	6,279,034	
Total Expenses	3,828,917	4,724,812	1,165,185	626,149	8,230,145	2,564,677	388,128	1,063,713	280,830	1,849,659	3,056,400	27,778,615	10,253,834	38,032,449	
Changes in Net Position	\$540,613	\$(134,622)	\$26,622	\$189,022	\$1,655,497	\$36,654	\$952,051	\$203,302	\$28,054	\$427,415	\$(648,798)	\$3,275,810	\$2,118,957	\$5,394,767	
Memo for Fiscal Year															
Capital Expenditures	\$113,813	\$664,121	\$402,955	\$198,604	\$1,814,021	\$71,100	\$148,812	\$601,313	\$5,000	\$221,248	\$26,719	\$4,267,706	\$7,037,423	\$11,305,129	
Principal Payments	\$-	\$160,501	\$-	\$153,216	\$862,100	\$1,949	\$-	\$2,599	\$1,129	\$5,506	\$-	\$1,187,000	\$495,761	\$1,682,761	

HISTORY OF FACILITY FEES



HISTORY OF DISTRICT FUND CAPITAL EXPENDITURES



MEMORANDUM

TO: Board of Trustees

FROM: Steven J. Pinkerton
General Manager

Phil Horan
Vice Chairman, Board of Trustees

SUBJECT: Review, discuss, and possibly 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

STRATEGIC PLAN: Long Range Principle #2 - Finance
Long Range Principle #3 – Workforce
Long Range Principle #4 – Service
Long Range Principle #6 – Communication

DATE: January 25, 2019

EXECUTIVE SUMMARY

The Board of Trustees tasked Staff with going out for a Request for Information followed by a Request for Proposal to qualified legal services providers and then bringing back their recommendation to the Board of Trustees for review and approval. The Board of Trustees identified Vice Chairman Phil Horan as its designee to be involved in the process. The process has been accomplished under Nevada Revised Statutes 332.115 and found Hutchison & Steffen to be well qualified, has a depth of expertise in a variety of areas, has a history of service to the District, and has proposed the most competitive pricing amongst the remaining two qualified candidates (\$12,000 per month (H&S) versus \$20,000 per month (MC)).

I. RECOMMENDATION

That the Board of Trustees makes 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.

Review, discuss, and possibly -2-
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

January 25, 2019

II. DISTRICT STRATEGIC PLAN

Long Range Principle #2 - Finance
(Comply with State and Federal Regulations)

Long Range Principle #3 – Workforce
(Comply with State and Federal Regulations)

Long Range Principle #4 – Service
(Utilize best practice standards for delivery of services)

Long Range Principle #6 – Communication
(Promote transparency in all areas including finance, operations and public meetings)

III. BACKGROUND

Resolution 1480, the District's personnel management policy, outlines the respective roles and responsibilities of the Board of Trustees and the General Manager regarding management of District staff. It states that *"the General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees."*

On December 10, 2014, the Board of Trustees authorized the General Manager to execute the necessary engagement letters to appoint RKG Lawyers LLC as District Legal Counsel at a monthly retainer rate of \$10,000 per month.

RKG Lawyers LLC was selected through a competitive process. The process included published notice to identify interested firms and subsequent review for this professional service.

A key component of the process was to identify a fee for service that allowed for a more predictable cost for both budget and managing the relationship. A requested service was regular office hours on District premises to better facilitate transactional elements of the District's business.

The initial engagement letter was on a monthly basis. This allowed both parties time to evaluate the relationship and modify as necessary based on the actual hours needed in legal support for the District.

Review, discuss, and possibly 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

-3-

January 25, 2019

In August, 2016, an agreement was executed with RKG Lawyers LLC which expired on December 31, 2018.

In November 2017, the Board approved continuing the contract for legal services with RKG and their successor in interest law firms of Reese Kintz, LLC and Hutchison & Steffen, PLLC for the remainder of the contract term.

Since January 1, 2019, RKG and their successor and interest law firms have continued to honor the current contract terms until and new firm is selected.

Current Situation

In anticipation of the expiration of the current agreement, on August 27, 2018, the Board of Trustees directed the General Manager to initiate the process for the identification, review, selection and proposed appointment of District Legal Counsel. The Board of Trustees also designated Vice Chairman Horan to be the Board representative to this process.

A Request for Information (RFI) for legal services was advertised during the period of September 12, 2018 to September 16, 2018, in both Southern and Northern Nevada newspapers.

Five RFI responses were received (Hutchison & Steffen, McDonald Carano, Woodburn and Wedge, Matuska Law Offices, Ltd, and Steven T. Polikalas, Ltd. The selection committee composed of Vice Chair Horan and Senior Staff identified three firms to continue in the process. These firms were sent the second, more in depth, questionnaire and asked for a formal proposal. These three firms were:

Hutchison & Steffen
McDonald Carano
Woodburn and Wedge

Selection committee in-person interviews were conducted with Hutchison & Steffen, Woodburn & Wedge, and McDonald Carano the week of December 17, 2018.

Following the interviews, Woodburn & Wedge and McDonald Carano were requested to submit additional information – a sample general counsel agreement

Review, discuss, and possibly -4-
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

January 25, 2019

and confirmation of no conflicts. Hutchison & Steffen had submitted this information with their initial response.

Woodburn and Wedge withdrew from the process following the request.

After reviewing all of the pertinent information, the selection panel is recommending Hutchison & Steffen to serve as District General Counsel for the next three years.

For the past four years, Hutchison & Steffen partner Jason Guinasso, has provided legal support to the District in a variety of areas including Labor and Employment, Workers Compensation, Civil Litigation, Property Law, Contracts and Transactional law, Government Affairs and Legislative Advocacy, Public Entity Law, and Business Law.

IV. BID RESULTS

This item is not subject to competitive bidding within the meaning of Nevada Revised Statute (NRS) 332.115 as described in subsection (b) Professional Services.

V. FINANCIAL IMPACT AND BUDGET

A key component of the process in selecting legal counsel in 2014 was to identify a fee for service that allowed for a more predictable cost for both budgeting and managing the relationship. A requested service was regular office hours on District premises to better facilitate transactional elements of the District's business.

The current retainer fee structure has allowed for a stable, consistent cost structure for District legal services and has greatly enhanced the level of service provided to the District.

VI. ALTERNATIVES

The Board could solicit request for proposals from other firms or choose to negotiate with one of the other proposers.

Review, discuss, and possibly -5-
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

January 25, 2019

VII. COMMENTS

The proposed contract includes an increase of the current retainer amount from \$10,000 per month to \$12,000 per month. The current retainer amount has been flat for the past four years. Given the substantial amount of service provided under the retainer, Staff believes that the rate increase is commensurate with the comprehensive and high quality services provided by the firm. An additional change is that this proposed agreement includes one Open Meeting Law complaint response every six months for a total of two (2) per calendar year. If there are additional Open Meeting Law complaints filed in excess of this limit, the proposed agreement includes a provision/charge for that scenario.

Staff is recommending a three year contract to ensure a long term stable relationship with the proposed firm.

It should be noted that the recommended firm has included rates for additional services outside the retainer services and those would be authorized on a case-by-case basis depending upon need and done so under the General Manager's spending authority.

VIII. 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.

Hutchison & Steffen Proposal Supplement

RETAINER AGREEMENT

By and Between

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

And

THE LAW OFFICES OF HUTCHISON & STEFFEN, PLLC

THIS RETAINER AGREEMENT (the "Retainer Agreement") is entered into by and between the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (the "IVGID") and the law firm of HUTCHISON & STEFFEN, PLLC ("Firm") and is effective as of the 1st day of January 2019.

**I.
RECITALS**

WHEREAS, IVGID and Firm desire to engage in a stable and flexible long term contractual relationship whereby IVGID can recognize pricing efficiencies for legal services and the Firm is available to provide service as IVGID Attorney, as well as additional legal services on an as needed basis, in a thoughtful and cost effective manner; and

WHEREAS, IVGID and Firm desire to respectively receive and provide legal services specifically described herein pursuant to this Retainer Agreement;

WHEREAS, IVGID and Firm specifically acknowledge that this Agreement is not an employment agreement and does not establish a relationship of employer and employee between Firm and IVGID, between IVGID Attorney and IVGID, or between IVGID and any Firm Attorney, but defines a relationship between the parties wherein the Firm, its officers and employees, including those designated IVGID Attorney or Assistant IVGID Attorney are in fact independent contactors of IVGID and remain solely the employees of the Firm; and

WHEREAS, Firm reserves its independence to act within the limits imposed by law and professional obligations such that IVGID's policy objectives during the representation will be furthered through means the Firm considers appropriate under its professional obligations after consultation with IVGID and as may otherwise be required by the rules regulating the Nevada Bar.

NOW, THEREFORE, it is agreed as follows:

1. RETAINER AGREEMENT. This Retainer Agreement restates, supersedes, and replaces all prior agreements between the parties concerning the provision of legal services in the manner and under the terms described in this Agreement.

2. TERM. The term of the Agreement shall be for a period of three (3) years, commencing on March 1, 2019, subject to termination, as set forth in Section 10.3 below.

3. IVGID ATTORNEY SERVICES.

3.1. Firm will provide legal services as IVGID Attorney to IVGID relative to the direction of the IVGID General Manager as prescribed under Resolution 1480, the District's personnel management policy, which states, "the General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees."

3.2. IVGID Attorney shall serve as chief legal advisor to IVGID Board of Trustees, IVGID General Manager, and all IVGID departments and offices. IVGID attorney shall represent IVGID in all legal proceedings.

3.3. For purposes of this Retainer Agreement Jason D. Guinasso, Esq., the Managing Partner for the Northern Nevada Officers of the Firm shall be designated as IVGID Attorney ("Designated Lawyer"). The Designated Lawyer of the Firm serving as IVGID Attorney for IVGID may be substituted following notice to the General Manager and IVGID Board Chair.

3.4. Firm shall also designate one or more attorneys, who along with the Designated Lawyer shall serve accompanied by other members of the Firm, and IVGID shall have access to, the complete complement of practice groups and breadth of experience of Firm attorneys along with the full statewide resources of the Firm.

3.5. The contemplated services described in this Agreement are to be provided in conjunction with efforts of designated officials and staff of IVGID to achieve the goals of IVGID as determined by the IVGID Board and the IVGID General Manager. The Agreement contemplates that the work will be assigned to IVGID Attorney either by IVGID Board or by IVGID General Manager. Such legal services, as enumerated below, are to be provided as IVGID Attorney Legal Services on a monthly retainer basis, and supplemented by additional IVGID Attorney Legal Services, as enumerated below, on an hourly basis as approved by work order. Additional Special Counsel Legal Services will also be provided separately by the Firm or other firms on an hourly basis by separate work orders for special services or as otherwise approved by IVGID Board as provided in Sections 4 and 5 hereof.

3.6. IVGID Attorney Legal Services encompass the following:

3.6.1. Attend two IVGID Board meetings per month.

3.6.2. Review and approve meeting agendas to ensure that they are in compliance with the Nevada Open Meeting Law.

3.6.3. Provide two training sessions, when requested, for IVGID Board and staff each year that will help to reduce questions by IVGID Board and staff about legal issues and reduce IVGID's risk in its operations or, in the alternative, attend up to four additional workshops, retreats or other meetings at the request of the General Manager.

3.6.4. Assist District Clerk with responses to Public Records Requests.

3.6.5. Participate in up to one weekly conference either in person or via teleconference (as required by IVGID General Manager) at a regular time to be mutually determined by IVGID General Manager and IVGID Attorney that will include IVGID Manager and Department Heads (also

referred to commonly as the “Senior Team”) to identify and discuss outstanding legal issues, discuss projects both proposed and in development, share information associated with services to be provided by the Firm, and address the means to serve IVGID's legal needs;

- 3.6.6. Participate in one weekly meeting in person or by phone with the General Manager and address legal questions;
- 3.6.7. Participate in bi-weekly meetings with the Director of Public Works and address legal questions;
- 3.6.8. Attend bi-weekly meetings with the Director of Human Resources and address legal questions;
- 3.6.9. Crisis and emergency management, advice and responses, as requested by General Manager, to events that present risks to Staff, Board of Trustees or the District.
- 3.6.10. Receive, analyze and respond to regular electronic communications from Staff and Trustees with requests for basic information and legal advice (responses to complex questions that require research and/or extended responses will not be included in this email and will be charged to the District as “Additional Services”)
- 3.6.11. Receive and return phone calls from Staff and Trustees with requests for information or legal advice.
- 3.6.12. Develop and implement a procedure to provide prompt responses to IVGID General Manager and IVGID Board with date stamping (or other tracking for accountability purposes) of all internal requests for legal services and to coordinate that work with IVGID General Manager's and Board's work-plans and develop appropriate quality control and establish with the Board and IVGID General Manager benchmarks to measure performance under this Agreement;

- 3.6.13. Provide administration and periodic oversight and review of all special counsel engagements (including those involving other law firms or attorneys), or use of consultants necessary to support all special counsel engagements, including review, analysis and recommendation regarding payment of all billings by special counsel, including consultants;
- 3.6.14. Complete preparation, adoption and codification of IVGID Code.
- 3.6.15. Provide legal advice to IVGID Board and participate in individual calls with IVGID Board members in order to provide advice to the Board regarding upcoming IVGID Board agenda items or ethics inquiries and participate in the preparation of agendas for IVGID Board and be prepared to offer legal advice on all agenda items at meetings of the Board or other committees and public bodies the Board shall appoint;
- 3.6.16. Provide to Board and IVGID General Manager a monthly report that describes the status of all outstanding matters and provides such other information regarding the matters being handled by the Firm under this Agreement as requested by the Board;
- 3.6.17. Facilitate the adherence to provisions of IVGID Ordinances, Resolutions and Policies, and drafting appropriate ordinances, resolutions, legislation, service agreements, interlocal agreements, and other documents and instruments to collaboratively and cooperatively achieve IVGID's objectives in the most cost effective and time efficient manner;
- 3.6.18. Provide the Board and IVGID General Manager timely updates regarding changes in the law (legislation or cases) that may affect IVGID operations, policies or activities; and

3.6.19. Provide the Board and IVGID General Manager with options to cost effectively handle all legal matters incorporated in this Agreement while retaining the high quality of legal services through the use of forms, the use of lower priced staff, various alternate billing methods including using special counsel, temporary employees, task based billing, or other methods of charging for services or service delivery.

3.6.20. IVGID Attorney Legal Services do not encompass or include Additional IVGID Attorney Legal Services or Special Counsel Legal Services described herein, nor bond counsel, disclosure counsel or other legal services not specifically included in this subsection.

4. ADDITIONAL IVGID ATTORNEY LEGAL SERVICES.

4.1. Additional IVGID Attorney Legal Services encompass the following:

4.1.1. Attend, as reasonably required or requested, all meetings of IVGID Board not described in the foregoing subsection as IVGID Attorney Legal Services, and attend meetings with third parties or IVGID staff and/or IVGID Department Heads, as reasonably required or requested by IVGID General Manager.

4.1.2. Represent IVGID in the acquisition and disposition of real property rights and interests in the normal course of business, including the issuance of title insurance commitments and policies;

4.1.3. Coordinate, in concert with IVGID Manager, with legal counsel and other professionals representing governmental agencies or third parties on routine legal matters affecting IVGID in the normal course of business;

4.1.4. Attend Ordinance and/or code enforcement hearings and defend decisions of IVGID General Manager and Senior Staff in court of law and/or before administrative agencies;

4.1.5. Perform other legal services which IVGID and Firm

mutually agree are outside the normal and regular scope of day-to-day general counsel services, including special legal projects of a significant nature outside the normal day-to-day representation of IVGID;

- 4.1.6. Prepare responses to and defend against Open Meeting Law Complaints, Ethics Complaints, and complaints filed with state agencies when said responses are required.
- 4.1.7. Prosecute or defend litigation as directed by the Board or IVGID General Manager, including mediation, validation proceedings, and arbitrations before administrative boards, arbitrators, mediators, courts of all levels of the county, state or federal governments and report to Council and Manager on that litigation regularly; and
- 4.1.8. Prosecute or defend appeals in the courts of this state and the federal government and administrative boards having jurisdiction over matters affecting IVGID as directed by the Council or IVGID Manager.
- 4.1.9. Special Counsel Legal Services described in Section 4 hereof,
- 4.1.10. Bond counsel and disclosure counsel services.
- 4.1.11. The provision of Additional IVGID Attorney Legal Services shall be conditioned upon a scope of services as directed or authorized by either IVGID General Manager or IVGID Board, as applicable, and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A", or as otherwise approved by IVGID Board.

5. SPECIAL COUNSEL SERVICES.

- 5.1. Firm shall also be available to provide Special Counsel Legal Services to IVGID. Special Counsel Legal Services are to be provided on an hourly basis or by task based billing or other billing arrangements as agreed upon by the parties in advance and commenced by separate work orders as described in this Agreement and as agreed by the parties. Such services are of a nature that require recognized expertise, experience, or specialized subject matter knowledge and focus above and beyond routine or normal day-to-day IVGID Attorney Legal

Services or Additional IVGID Attorney Legal Services, and shall generally include the following:

- 5.1.1. Providing advice, research, and assistance on extraordinary IVGID administration or operational matters and negotiations;
- 5.1.2. Rendering written memoranda or opinions outside the scope of IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services and which expose the Firm to significant liability;
- 5.1.3. Providing advice and research on the feasibility and legal sufficiency of statutory and alternative revenue sources, including the development or implementation of special assessment, impact fee, user fee, extraordinary revenue, utility fee or rate programs;
- 5.1.4. Negotiating, preparing, obtaining, delivering, and filing all documents in connection with the closing on any acquisition, contribution, sale, exchange, or disposition of any significant IVGID assets or systems requiring the financing thereof, including real and personal property associated with such IVGID assets or systems;
- 5.1.5. Nominally acting as a lobbyist before any legislative, administrative, or executive branch of government (such services, if extensive, may require a separate engagement);
- 5.1.6. Legal formulation, negotiation, drafting, and implementation of special or significant IVGID programs or initiatives;
- 5.1.7. The provision of Special Counsel Legal Services shall be conditioned upon a scope of services as directed or authorized by either IVGID Manager or IVGID Board, as applicable, and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A", or as otherwise approved by IVGID Board;

5.1.8. Special Counsel Legal Services described in this section do not include bond counsel, disclosure counsel, underwriter's counsel, or other legal services which are already or will be the subject of other separate agreements with IVGID, or are premised upon negotiated fees; or other legal services otherwise subsequently agreed to between the parties or third parties.

6. COMPENSATION FOR PROFESSIONAL SERVICES.

6.1. Firm will be compensated for IVGID Attorney Legal Services at the monthly retainer rate as authorized herein. Firm will be compensated for Additional IVGID Attorney Legal Services and Special Counsel Legal Services at hourly rates as authorized herein. Unless otherwise agreed to by the parties in separate writing, Firm will be compensated for legal services at negotiated and hourly rates as authorized herein.

6.2. The Firm will be compensated for IVGID Attorney Legal Services at the Firm's following monthly retainer rate:

6.2.1. **Twelve Thousand Dollars (\$12,000) per month** to be billed at the beginning of each calendar month for work to be performed and paid within thirty (30) days.

6.3. The Firm will be compensated for Additional IVGID Attorney Legal Services for hourly work at the following hourly rates:

6.3.1. **A blended rate of \$250 per hour** of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

6.3.2. Firm paralegals or law clerks at the **rate of \$110.00 per hour** (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; Firm agrees to assign matters to paralegals and law clerks to achieve the most cost effective service in

IVGID's best interest.

6.3.3. A **flat rate of \$2,500** for preparation of each and every response and defense to each and every Open Meeting Law Complaint, Ethics Complaint, or other complaint filed with any state agency when said response and defense is either requested by the General Manager or required by law. This flat rate does not include legal services and fees associated with hearings, proceedings, petitions, appeals or other litigation arising out of said complaints.

6.3.3.1. With regard to Open Meeting Law Complaints, one response and defense every six months will be not be charged at flat rate and will be incorporated into legal services covered under the retainer.

6.3.4. Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk or combination of attorney, paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance. Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost-effective benefit to IVGID as is in IVGID's best interest.

6.4. The Firm will honor hourly rates approved by the Nevada Public Agency Insurance Pool (POOL) and the Public Agency Compensation Trust (PACT) for all legal services covered by those entities.

6.5. The Firm will be compensated for Special Counsel Legal Services for hourly work at the following discounted and blended hourly rates:

6.5.1. A **blended rate of \$300 per hour** of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

6.5.2. Firm paralegals or law clerks at the **rate of \$110.00 per hour** (recorded and billed in increments no greater than

0.10 hour segments), dependent upon experience and expertise; and

- 6.5.3. (c) Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to IVGID as is in IVGID's best interest and Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance.
- 6.6. No attorney time shall be charged for any travel to IVGID or for travel to any meetings of IVGID Board if held within the County.
- 6.7. The Firm shall also be entitled to receive reimbursement for actual costs incurred such as, long distance telephone charges, overnight delivery charges, and travel expenses (when travel is necessary and requested from outside of Washoe County, Nevada; however, no other overhead charges will be reimbursed for copying, secretarial services or other overhead as those costs are considered a part of the fees paid under this Agreement. No travel expenses will be charged for daily travel within IVGID or for any travel for the purpose of attending and staffing any regularly scheduled meeting of IVGID Board in the Firm's role in providing IVGID Attorney Legal Services.)
- 6.8. The Firm shall bill IVGID periodically for monthly retainer and hourly work, but not more often than monthly, and provide an itemized statement of fees for services provided and costs incurred to date. Invoices must be submitted within 60 days of the first billing date in the cycle and all bills for the fiscal year must be submitted within 30 days after the conclusion of that fiscal year with an estimate of that bill's total submitted before the end of the fiscal year as reasonably required by IVGID Manager. All invoices shall include documentation for costs and be submitted to, approved, and promptly processed for payment by IVGID General Manager.

7. USE OF NECESSARY CONSULTANTS OR OTHER SPECIAL

COUNSEL; APPROVAL PROCEDURE.

- 7.1. IVGID may necessarily require legal expertise beyond the scope of IVGID Attorney, Additional IVGID Attorney, or Special Counsel legal service roles contemplated herein. Subject to the concurrence or recommendation of IVGID General Manager and, if required, the approval of IVGID Board, the Firm shall have the authority to use or retain on behalf of IVGID such additional consultants, experts, or counsel that it deems necessary to implement the objectives and programs of IVGID. Such approval shall be first requested in writing and shall include a scope of services and method of compensation for each additional consultant, expert, or counsel requested.
- 7.2. IVGID Attorney shall maintain oversight and request and provide to IVGID periodic status reports from either litigation or local counsel in the event of any representation pursuant to this section.
- 7.3. Statements for fees and costs incurred by any approved consultant, expert, or counsel, shall be first reviewed by the Firm for accuracy and completeness and, upon approval, submitted to IVGID Manager and/or IVGID Board for payment.

8. DISCLOSURE.

- 8.1. IVGID recognizes that the Firm represents other clients in or near Incline Village as General Counsel, including but not limited to the North Lake Tahoe Fire Protection District, the Incline Village Crystal Bay Visitors Bureau and the Tahoe Douglas Fire Protection District.
- 8.2. The Firm as IVGID Attorney will not represent any client, including but not limited to a municipality, county, local or state government agency or other person or entity in matters which the Firm determines to be directly adverse to IVGID nor will the Firm represent IVGID in matters which the Firm determines to be directly adverse to the interests of any other client of the Firm.

8.3. The rules regulating the Nevada Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest, even though there is some difference in interest among them.

8.3.1. It is also possible that during the course of the Firm's representation of IVGID's interests IVGID may become involved in transactions or disputes with other clients of the Firm in which IVGID's interests are or become adverse to the interests of one or more of the Firm's other clients, whether present or future. If such a conflict between IVGID interests and those of another of the Firm's clients, whether present or future, were to arise, the Firm will promptly notify IVGID of that circumstance.

8.3.2. The Firm reserves the right, on account of any such conflicts of interest, to withdraw from the matter in question and will assist IVGID in securing interim or alternative counsel for the matter in conflict if a conflict waiver is not otherwise permissible under the rules regulating The Nevada Bar.

8.3.3. The Firm represents local governments and private sector clients throughout Nevada and California, and wishes to be able to consider the representation of other local governments or public sector clients who may have interests that are potentially adverse to IVGID's, but with respect to matters that are unrelated in any way to our representation of IVGID. The ethics rules that govern the Firm permit it to accept such multiple representations, assuming certain requirements are met. Accordingly, during the term of this engagement, the Firm agrees that it will not accept representation of another client to pursue interests that are directly adverse to IVGID's interests unless and until the Firm makes full disclosure to IVGID of all the relevant facts, circumstances, and implications of the Firm's undertaking the two representations, and confirm to IVGID in good faith that the Firm has done so and that the following criteria are

met:

- 8.3.3.1. there is no substantial relationship between any matter in which the Firm is representing or has represented IVGID and the matter for the other client;
- 8.3.3.2. any confidential information that the Firm has received from IVGID will not be available to the attorneys and other Firm personnel involved in the representation of the other client;
- 8.3.3.3. our effective representation of IVGID and the discharge of the Firm's professional responsibilities to IVGID will not be prejudiced by representation of the other client; and
- 8.3.3.4. the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances, and implications of the Firm's undertaking the two representations. If the foregoing conditions are satisfied, IVGID agrees that the Firm may undertake the potentially adverse representation and that all conflict issues will be deemed to have been resolved or waived by IVGID.

9. CONTRACT ADMINISTRATION.

- 9.1. In accordance with Resolution 1480, IVGID Board hereby designates its General Manager to provide policy direction and instructions to the Firm in the administration of its duties hereunder, approving and authorizing work orders, the provision of Additional Legal Services and all other matters necessary to administer this Retainer Agreement on behalf of IVGID.
- 9.2. The Firm shall be entitled to reasonably rely upon such direction received from IVGID General Manager.
- 9.3. The Firm will alert IVGID Manager if any project or service

it is working on or which it is asked to work on may exceed the budget for the year, or for that project or service and will not proceed to provide services for which it seeks compensation until sufficient funding to pay the Firm for its services for the project or service is approved; unless specifically directed by Board or IVGID General Manager to proceed.

10. GENERAL.

10.1. This Retainer Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. In the event of any dispute arising out of or relating to this Retainer Agreement, the parties agree to waive trial by jury and agree that venue shall lie in Washoe County, Nevada. In the case of litigation of such disputes, the prevailing party shall be entitled to recover attorney fees and costs from the other party. This Retainer Agreement may be amended only by a written agreement entered into by the parties.

10.2. IVGID General Manager will evaluate the performances of the legal services of the Firm on at least an annual basis and shall review such evaluation with the Firm. The evaluation shall include input from each member of the Board of Trustees, Senior Staff and the General Manager, and shall be completed by 30 June of each year. More frequent and informal performance evaluations and feedback may be undertaken by District at any time.

10.3. This Retainer Agreement or the appointment of Firm as IVGID Attorney to IVGID may be terminated with or without cause by IVGID Board or upon the hiring of a full-time attorney directly employed by IVGID as IVGID Attorney or by Firm at any time upon one hundred and eighty (180) days written notice.

10.3.1. In the event that IVGID desires to terminate Firm's services with notice of a lesser period, IVGID will provide Firm with a severance payment, equal to the agreed upon monthly retainer, for each month of said specified six (6)

month notice period for which notice is shortened and is not given.

10.3.2. Additionally, even if IVGID does elect to seek and obtain either IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services, or both, from an attorney or firm other than Firm, this contract may stay in force and effect so that the Firm is available to provide to IVGID, on an as needed and agreed to basis, supplemental legal services as provided for herein.

10.3.3. In the event of termination, the Firm shall assume responsibility for completion of and shall be compensated for all representation requested prior to the notice of termination and through any prompt transition to termination agreed upon by the parties at the hourly rates agreed upon for Additional IVGID Attorney Legal Services for any remaining IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services and at the rates agreed upon for Special Counsel Legal Services for those services. Provided however, IVGID Council may terminate this Retainer Agreement for breach by the Firm with such notice as may be reasonable under the circumstances.

10.3.4. In the event of termination, with or without cause, the Firm shall be compensated in accordance herewith for approved time and expenses expended prior to the date of termination. This Retainer Agreement may be executed in multiple counterparts.

10.3.5. All original files (their contents), records and documents are the property of IVGID and not of the Firm or its Attorneys and upon termination shall be returned to or delivered to IVGID as IVGID General Manager reasonably directs at the expense of the Firm. The Firm may retain copies as necessary to comply with the Rules of the Nevada Bar.

10.4. This Retainer Agreement shall be effective as of the date

first written above and is the entire agreement between the parties concerning the subject matter hereof.

11. APPOINTMENT.

11.1. The IVGID Board hereby appoints Firm as IVGID Attorney for IVGID; this Retainer Agreement shall hereafter provide the terms and conditions for such engagement. Such appointment may be changed or altered from time-to-time by resolution of IVGID Board. As required, IVGID General Manager is directed and authorized to use and consult with Firm for IVGID Attorney Legal Services and Additional IVGID Attorney Legal Services as described herein. Additionally, and as required, IVGID Manager is directed and authorized to use and consult with Firm for Special Counsel Legal Services at a cost not to exceed the delegated purchasing limit of IVGID Manager on any single project or matter. For projects or matters above the then current delegated purchasing limit of IVGID Manager, Special Counsel Legal Services shall be provided by work order or as otherwise authorized and approved by IVGID Board.

EXHIBIT A
EXEMPLARY FORM OF LEGAL SERVICES WORK ORDER No.

[insert an identifying work order number here]

TO:

FROM: IVGID General Manager

1. Scope of Services: [describe whether Additional IVGID Attorney services (general counsel) or Special Counsel Services] are to be performed based upon the description attached hereto (A-1) in a proposal by IVGID Attorney that describes the scope of services, the time for performance, the hourly rates if not as described in the Retainer and which estimates the cost of performance.

2. Compensation: Hourly rates and reimbursement for actual costs as provided in IVGID Attorney Retainer Agreement between the parties, or this Work Order. If different rates from those included in the Retainer agreement are not included in the Scope of Services, then the Retainer rates apply.

3. Work Order Budget: The initial funding authorization or budget appropriation for this Work Order shall not exceed the amount of [amount] or the estimate incorporated in the Scope of Services attached to this Work Order whichever is lower. However, it is understood that the direction of IVGID will control the work effort and additional budget appropriations may be required and authorized.

4. Use of Necessary Consultants: Pursuant to the Retainer Agreement, IVGID confirms, directs, and authorizes the use of (1) [name of consultant] and (2) [name of consultant] and the scope of services and method(s) of compensation necessary to support the provision of legal services and continued assistance to IVGID with the [describe work effort and provide attachment].]

Authorized by:

Accepted by:

Title: IVGID Manager/Mayor Title: Authorized Signatory

Date: ----- Date:

[Attach Scope of Service A-1]

A-1 Attachment to Work Order No. [insert work order number here]

Hutchison & Steffen Proposal

October 19, 2018

Via Hand Delivery:

Incline Village General Improvement District
Attention: Susan Herron
District Clerk to the Board of Trustees
893 Southwood Boulevard
Incline Village, NV 89451

**Re: Hutchison & Steffen
Proposal for General Counsel Legal Services**

Dear Ms. Herron:

Thank you for the opportunity to respond to the Incline Village General Improvement District's ("IVGID") Request for Proposal for General Counsel Legal Services. Enclosed with this cover letter, is one (1) original and five (5) copies of the Firm's Proposal. Hutchison & Steffen would be honored to continue to represent the Incline Village General Improvement District. Hutchison & Steffen is a solution driven law firm dedicated to adding value to the clients and communities we serve. Our firm has the legal knowledge, experience, and reputation, as well as an intimate knowledge of IVGID and the Incline Village and Crystal Bay Community, that is necessary to effectively represent the District.

Hutchison & Steffen is one of the largest and most prominent and respected law firms in the state. It's lawyers aggressively represent clients from boardrooms to courtrooms before government agencies and legislative bodies.

Collectively, the attorneys of Hutchison & Steffen have represented governing bodies, public boards, municipal entities, counties, non-profit organizations, special improvement districts, towns, and fire districts in a broad range of legal matters for over 100 years. Founded in 1996 by Mark A. Hutchison and John T. Steffen, Hutchison & Steffen is a proven, AV-rated, full-service law firm, whose attorneys are experienced and committed to providing the highest level of legal services. As one of Nevada's largest law firms, Hutchison & Steffen has built a reputation for achieving outstanding results for clients.

As you know, I have served IVGID as District Legal Counsel since December of 2014. Since the beginning of the engagement with me and my prior law firm, I have delivered monthly legal services that have far exceeded the basic requirements and expectations set forth under the contract. Further, the legal services that I have provided have added value to the District as I have worked closely with the General Manager, Senior Staff and the Board of Trustees. Day or night, weekdays or weekends, twenty-four hours a day, seven days a week, I have always been available and accessible to answer questions, solve problems and contribute high quality services to the District. During this time period, I have provided the following services:

- Staffed official IVGID meetings;
- Resolved several questions regarding the Open Meeting Law;

- Defended Open Meeting Law Complaints before the Attorney General;
- Provided oversight and guidance regarding IVGID litigation;
- Successfully engaged in litigation against the District initiated by Aaron Katz and Frank Wright;
- Attended all regular and special meetings with Trustees and Senior Staff;
- Attended weekly Senior Staff meetings;
- Attended weekly meetings with the General Manager and addressed legal questions;
- Attended bi-weekly meetings with the Director of Public Works and addressed legal questions;
- Attended bi-weekly meetings with the Director of Human Resources and addressed legal questions;
- Fielded telephone calls before, during and after business hours from Trustees and Senior Staff;
- Received, analyzed and responded to over 20,000 e-mails;
- Prepared revision to Policy 3.1;
- Examined Ordinance 7 and litigation related thereto;
- Examined, revised and updated Ordinance 1 and began preparing revisions related thereto;
- Analyzed and resolved concerns about Resolution 1701 and Red White and Tahoe Blue;
- Began process of drafting IVGID Code;
- Addressed demands, requests and conflicts with members of the public;
- Assisted District Clerk with responses to records requests;
- Provided training and education on IVGID Communication and provided draft language for an IVGID Communication Policy;
- Provided Training on the Open Meeting Law;
- Provided Orientation on Roles and Responsibilities of IVGID Trustees;
- Resolved various issues regarding Diamond Peak operations;
- Resolved various issues regarding Golf Course operations;
- Managed and provided guidance on several personnel matters, including discipline and termination related thereto;
- Received, analyzed and responded to Human Resources issues;
- Conducted workplace investigations;
- Attended regular meetings and answered several questions for Public Works;
- Received, analyzed and responded to questions from General Manager;
- Received, analyzed and responded to questions and concerns of Trustees;
- Participated in Strategic Planning Process;
- Provided assistance with revision to reporting regarding IVGID budget;
- Managed the process and procedure for selecting and installing new Trustees after resignations of two Trustees;
- Answered questions, conducted research, coordinated legal support for due diligence efforts surrounding proposed lease modification with Parasol Community Foundation.

While the foregoing list is not exhaustive of all the legal services the firm has delivered to IVGID in the last three years, it is a good representative sample of the broad scope of service competently delivered.

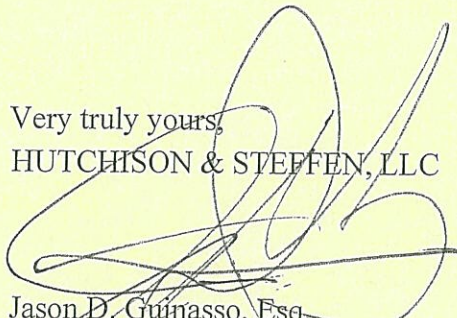
Moreover, I have also provided regular legal support in a variety of areas including labor and employment, workers' compensation, civil litigation, property law, contracts and transactional law, government affairs and legislative advocacy, public entity law, local government finance, open meeting law, public records law, and business law.

On at least two occasions, the District's Senior Team evaluated my legal services and determined that they

Incline Village General Improvement District
Response to Request for Proposal
October 19, 2018, page 3

had been very pleased with the current legal services arrangement. The General Manager has also been satisfied with my legal services over the past four years.

Very truly yours,
HUTCHISON & STEFFEN, LLC



Jason D. Guinasso, Esq.
For the Firm

JD:bf

Enclosures



500 DAMONTE RANCH PARKWAY, SUITE 300
RENO, NV 89521
775.853.8746
FAX 775.201.9611
HUTCHLEGAL.COM

JASON D. GUINASSO
PARTNER
JGUINASSO@HUTCHLEGAL.COM

October 19, 2018

Via Hand Delivery:

Incline Village General Improvement District
Attention: Susan Herron
District Clerk to the Board of Trustees
893 Southwood Boulevard
Incline Village, NV 89451

**Re: Hutchison & Steffen
Proposal for General Counsel Legal Services**

1. Firm Experience:

The Firm's attorneys have over 100 years of experience representing governing bodies, public boards, municipal entities, counties, non-profit organizations, special improvement districts, towns, and fire districts. This experience is directly applicable to the legal needs articulated within the scope of legal services defined by the Incline Village General Improvement District. The Firm has a statewide reputation for providing high quality legal services to a diverse range of governing bodies similar to the Incline Village General Improvement District.

The attorneys at the Firm are among the best litigators in the State of Nevada in both State and Federal Court, as well as in wide breadth of state and federal administrative law courts.

Hutchison & Steffen provides experienced and aggressive litigators who have successfully tried hundreds of cases in both state and federal court. The firm provides a wide range of litigation services to deal with most types of lawsuits and adversarial proceedings in state and federal courts and before various state and federal agencies. Our client base includes individuals, businesses, insurance carriers, government entities, municipalities, and healthcare service providers from all over Nevada. Our skilled litigation team handles litigation in a wide variety of legal practices areas, including business and commercial law, administrative law, asset protection law, banking law, bankruptcy & creditor's rights law, constitutional law, construction law, corporate law, employment law, workers' compensation and workplace safety law, labor law, family law, government relations/election law, healthcare law, insurance law, landlord/tenant law, personal injury law, professional liability law, real estate law, and trust & probate law.

In addition to a successful litigation practice, Hutchison & Steffen is distinguished from other major firms in the State of Nevada because our Firm brings to our clients an extensive history in the practice of appellate law. Our attorneys have participated as counsel in cases before the United States

Supreme Court, Federal Appellate Courts, and the Nevada Supreme Court. The Firm's appellate litigators are licensed before the U.S. Supreme Court, U.S. Ninth Circuit Court of Appeals, U.S. Tenth Circuit Court of Appeals, U.S. Seventh Circuit Court of Appeals, U.S. District of Columbia Court of Appeals, and state appellate courts in Nevada, Utah, California, Colorado, Massachusetts, Ohio, and the District of Columbia. In addition, the Firm's litigators have served as law clerks for both federal courts of appeals and the Nevada Supreme Court. The Firm's experience in the Nevada Supreme Court is unparalleled in the state, and two of Hutchison & Steffen's attorneys offer combined experience of almost 30 years. One was with the Court for 15 years, retiring as Chief Justice, and another was both a staff attorney and a long-time supervising staff attorney at the Court.

The attorneys of this firm have extensive knowledge of the Nevada Open Meeting Law and Nevada Revised Statute 318. As you know, Mr. Guinasso and his legal team have successfully responded to the Office of the Attorney General in its investigations of 24 Open Meeting Law Complaints (See Log of Complaints attached as **Appendix Item "A"**). Mr. Guinasso and his legal team have spent over 750 hours in the past nine months alone, not including the hours spent in (2014, 2015, 2016, and 2017) providing legal support to the District as it pertains all the deliverables requested by the District, including:

- Nevada Open Meeting Law,
- Nevada Revised Statute 318,
- Workmen's Compensation issues,
- Employment and Labor Law issues,
- Local Government Purchasing issues,
- Public Works Contracting issues,
- Litigation defense for public entity torts, labor and employment, public safety, and construction law, Nevada and Washoe County property law,
- Development/redevelopment initiatives,
- Lake Tahoe water rights, environmental issues, and other critical matters important to Lake Tahoe,
- Working with the TRPA,
- Reviewing, analyzing, revising, and advising the District on compliance matters with local government code development and enforcement.

Unlike any other candidate under consideration for District Legal Counsel, Mr. Guinasso has intimate knowledge of and extensive experience serving IVGID, its Board, its General Manager, its senior staff, its employees, and the Incline Village/Crystal Bay Community. The knowledge and experience Mr. Guinasso has acquired would take years for any other candidate to accumulate. Additionally, Mr. Guinasso and his legal team have maintained and continue to occupy an office in Incline Village, with one attorney maintaining his residence in the community, which adds to our Firm's intimate knowledge and expertise regarding the issues that are unique to IVGID.

Finally, the attorneys of Hutchison & Steffen are well-versed in the often-complex practice area of administrative & regulatory law. The Firm's attorneys help to navigate clients through the regulations, rules, procedures, and practices of federal, state, county, or city government. They also effectively represent clients before agencies, boards, commissions, and divisions. Clients must first seek legal remedies by exhausting proceedings within the agency itself and then if need be challenge adverse decisions in court.

There are very few if any law firms with the quality of experience in working with elected officials and navigating the nuances of complex relationships in a political environment. To effectively represent a public body, an attorney needs to understand and value working with a mission-driven organization that is answerable to the public. Hutchison & Steffen has an extensive public law practice representing state government, local government, and special governmental entities, including general improvement districts, school districts, community college districts, public universities, cities, counties, special districts, ports, transit districts, urban renewal agencies, and housing authorities. We serve as general counsel for a number of our public clients and work with in-house general counsel for others. We serve a number of clients in more specialized areas such as employment, labor relations, benefits, elections, ethics, public records and meetings, finance, bonding, land use, taxation, real estate, and construction contracting. Our general approach to mission-driven clients is to learn their mission and become part of the team to deliver high quality legal services.

2. Firm Capacities:

A. Titles, office location and contact information.

- (1) **Include the key individuals and support staff that will actually be responsible for conducting legal activities and for administrative management of the agreement.**
- (2) **Include a percent-time availability providing legal advice and assistance to operating departments with regard to employee disciplinary actions.**

Hutchison & Steffen, PLLC is a statewide law firm with three locations:

Las Vegas Office 10080 West Alta Drive, St. 200 Las Vegas, NV 89145 (702) 385-2500	Reno Office 500 Damonte Ranch Parkway, St.980 Reno, NV 89521 (775) 853-8746	Incline Village Office 885 Tahoe Boulevard, Incline Village, NV 89451 (775) 853-8746
--	---	---

a. Jason D. Guinasso, Esq., Managing Partner of Northern Nevada Offices
500 Damonte Ranch Parkway, Suite 980,
Reno, NV 89521, (775) 853-8746, jguinasso@hutchlegal.com.

- i. Lead counsel
- ii. Mr. Guinasso will manage all legal services being delivered to IVGID. The percent of time for Mr. Guinasso's availability to provide legal advice and

- assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.
- iii. Mr. Guinasso will be the contact person throughout this proposal process. Mr. Guinasso has been employed by the Firm since 2017. In addition to serving as legal counsel for IVGID since 2014, Attorney Guinasso has also served as legal counsel for North Lake Tahoe Fire Protection District, Tahoe Douglas Fire Protection District, the Reno Police Protective Association, and Washoe County Sheriff's Deputy Association. Mr. Guinasso is licensed in Nevada and California. Attorney Guinasso specializes in the following practice areas: Government Entity Law, Administrative & Regulatory Law; Civil Litigation; Employment & Labor Law; Human Resources Support; Worker's Compensation. (See Jason Guinasso's full Biography included at **Appendix Item "B"**).
- b. Mark A. Hutchison, Esq., (See Mark A. Hutchison's full Biography included at **Appendix Item "C"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation will be tailored to the needs of IVGID.
- c. John T. Steffen, Esq. (See John Steffen's full Biography included at **Appendix Item "D"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.
- d. Kimberly Marsh Guinasso (See Kimberly A. Marsh Guinasso's full Biography included at **Appendix Item "E"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.
- e. Eric C. Werner (See Eric C. Werner's full Biography included at **Appendix Item "F"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.
- f. Daniel H. Stewart (See Daniel H. Stewart's full biography included at **Appendix Item "G"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.

- g. Joseph R. Ganley (See Joseph R. Ganley's full biography included at **Appendix Item "H"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.
- h. Thomas L. Roberts (See Attorney Roberts full biography included at **Appendix Item "I"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.
- i. C. Michael Rasmussen (See C. Michael Rasmussen's full biography included at **Appendix Item "J"**).
 - i. Special Counsel
 - ii. The percent of time to be assigned to this representation to provide legal advice and assistance to operating departments with regard to employee disciplinary actions will be tailored to the needs of IVGID.

(3) Identify dates the proposer would be available for an interview between October 24, 2018 and November 9, 2018.

Jason Guinasso is available during the following dates and time blocks for an interview with IVGID: Monday, October 29, 2018 (all day); Wednesday, October 31, 2018 (all day), Thursday, November 1, 2018 (all day), Friday, November 2, 2018 (all day), Wednesday, November 7 (all day). This matter is a top priority to Mr. Guinasso, and he will make himself available as needed to attend an interview if the aforementioned times do not work.

3. References

Reference No. 1

- a. Tahoe Douglas Fire Protection District
- b. 193 Elks Point Rd, Zephyr Cove, NV 89448
- c. Fire Chief Scott Baker
- d. (775) 586-1577
- e. sbaker@tahoefire.com
- f. **Short description of Jason Guinasso's role with Tahoe Douglas Fire Protection District:**

Served as co-general counsel with previous firm sharing the responsibility of attending monthly Board meetings, providing legal advice as needed to senior staff, and Board of Trustees, reviewing contracts, conducting legal research as needed, providing trainings to ensure compliance with Nevada law, assisting with litigation matters, and/or acting as liaison to outside counsel, and providing annual litigation reports.

Reference No. 2

Firm or Staff Member's role:

- a. North Lake Tahoe Fire Protection District
- b. Address: 866 Oriole Way, Incline Village, NV 89451
- c. Contact: Fire Chief, Ryan Sommers
- d. Phone:(775) 833-8101
- e. E-mail: rsommers@nltpd.net
- f. **Short description of Jason Guinasso's role with North Lake Tahoe Fire Protection District:** Served as co-general counsel with previous firm sharing the responsibility of attending monthly Board meetings, providing legal advice as needed to senior staff, and Board of Trustees, reviewing contracts, conducting legal research as needed, providing trainings to ensure compliance with Nevada law, assisting with litigation matters, and/or acting as liaison to outside counsel, and providing annual litigation reports

Reference No. 3

Firm or Staff Member's role:

- a. City of Mesquite
- b. Address: 10 East Mesquite Boulevard, Mesquite NV 89027
- c. Contact: Robert D. Sweetin, City Attorney
- d. Phone: (702) 346-8831
- e. E-mail: rsweetin@mesquitenv.gov
- f. **Short description of Firm's role with the City of Mesquite:** Serves as counsel in litigation matter.

Reference No. 4

Firm or Staff Member's role:

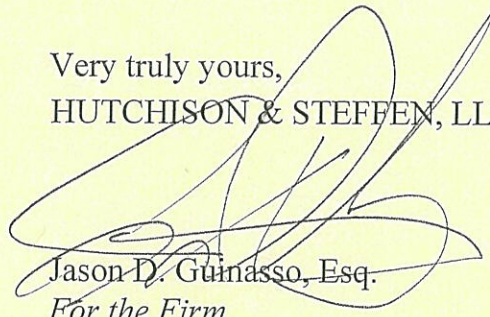
- a. Valley Electric Association
- b. 800 E. Highway 372, Pahrump, NV 89041
- c. Tom Husted, CEO
- d. (775) 727-2134
- e. Email: tomh@vea.coop
- f. **Short description of Firm's role with Valley Electric Association:** Serves as counsel in transactional matters.

4. Estimate of Hours

Hutchison & Steffen is pleased that IVGID has received from Jason Guinasso since 2014 the highest level of legal services at a highly discounted rate with a monthly retainer amount of \$10,000.00

Thank you for the opportunity to present the Incline Village General Improvement District with our responses to your request for proposal. We appreciate you considering our firm for your legal service needs. If you have any questions or need any additional information about our firm. Please don't hesitate to call or write.

Very truly yours,
HUTCHISON & STEFFEN, LLC

A handwritten signature in black ink, appearing to read "Jason D. Guinasso", is written over the typed name and firm name.

Jason D. Guinasso, Esq.
For the Firm

JD:bf

**APPENDIX ITEM
A**

**APPENDIX ITEM
A**

OPEN MEETING LAW COMPLAINTS

Date	Tracking Number	Who Filed	Current Status
9/27/2018	13897-305	Aaron Katz	OPEN-Have not received opinion yet
07/11/2018	13897-294	Aaron Katz	CLOSED on 10/2/2018-Finding of no violation
06/15/2018	13897-287	Frank Wright	CLOSED-on 10/2/2018-Finding of no violation
05/31/2018	13897-283	Frank Wright	OPEN – Have not received opinion yet
05/08/2018	13897-282	Aaron Katz	Closed-on 10/5/2018
05/23/2018	13897-278	Frank Wright	OPEN – Have not received opinion yet
02/23/2018	13897-263	Aaron Katz	CLOSED – on 07/24/2018 agenda - Finding of no violation
12/22/2017	13897-260	Aaron Katz	CLOSED – on 03/13/2018 – Agenda – IVGID took corrective action
11/30/2017	13897-257	Frank Wright	OPEN – Have not received opinion yet
09/05/2017	13897-245	Frank Wright	CLOSED – on 01/24/2018 agenda – Finding of no violation
09/25/2017	13897-244	Frank Wright	CLOSED – on 01/24/2018 agenda – Finding of no violation
08/17/2017	13897-242	Frank Wright	CLOSED – on 01/24/2018 agenda – Finding of no violation
06/19/2017	13897-234	Judith Miller	CLOSED – On 11/15/2017 agenda – Finding of no violation
06/15/2017	13897-233	Frank Wright	CLOSED – On 11/15/2017 agenda – Finding of no violation
06/19/2017	13897-224	Judith Miller	CLOSED – On 11/15/2017 agenda – Finding of no violation
04/04/2017	13897-226	Frank Wright	CLOSED – On 11/15/2017 agenda – Finding of no violation
06/15/2017	13897-233	Frank Wright	CLOSED – On 11/15/2017 agenda – Finding of no violation
02/27/2017	13897-234	Frank Wright	CLOSED – On 11/15/2017 agenda – Finding of no violation
01/29/2016	13897-180	Aaron Katz	CLOSED – On 04/27/2016 agenda – Finding of no violation
08/17/2016	13897-204	Linda Newman	CLOSED – On 10/11/2016 agenda – Finding of no violation
10/21/2015	13897-171	Aaron Katz	CLOSED – On 04/27/2016 agenda – Finding of no violation
10/15/2015	13897-159	Frank Wright	CLOSED – On 01/27/2016 agenda – Finding of no violation
09/11/2015	13897-164	Frank Wright	CLOSED – On 02/24/2016 agenda (AG warned the Board to ensure that its agenda topics are clearly and completely stated-IVGID took corrective action by including the OAG Opinion in the next meeting agenda and included the Opinion in the supporting material of the next meeting)
07/01/2015	13897-155	Frank Wright	CLOSED – On 01/27/2016 agenda – Finding of no violation
09/24/2013	13-032	Aaron Katz	CLOSED - IVGID took corrective action – Finding of no violation
08/29/2013	13-031	Aaron Katz	CLOSED – IVGID took corrective action – Finding of no violation
06/06/2013	13-017	Aaron Katz	CLOSED – IVGID took corrective action – Finding of no violation
04/03/2013	13-010	Frank Wright	CLOSED – Finding of no violation
04/02/2013	13-008	Aaron Katz	CLOSED – Finding of no violation
03/18/2013	13-005	Judith Miller	CLOSED – Finding of no violation
09/28/2012	12-030	Frank Wright	CLOSED – AG provided some guidance; no corrective action required – Finding of no violation
12/22/2011	11-037	Frank Wright	CLOSED – Finding of no violation
08/05/2011	11-030	Aaron Katz	CLOSED – Finding of no violation
08/05/2011	11-026	Aaron Katz	CLOSED – Finding of no violation
08/05/2011	11-025	Paul Olsen	CLOSED – Finding of no violation
08/05/2011	11-024	Frank Wright	CLOSED – Finding of no violation

ETHIC COMMISSION COMPLAINTS

Date	Tracking Number	Who Filed	Current Status
2006	06-82	Steven Kroll	CLOSED – determined no hearing by Commission needed
2006	06-83	Steven Kroll	CLOSED – determined no hearing by Commission needed
2011	11-27A, -28A, -29A, -30A, -36A		CLOSED
2011	11-24C, -22C, -19C, -21C	Larry Pesetski, Paul Olson, Chris Crow, Howard Amundsen (via Katz)	CLOSED
2012	11-19C, -21C, -22C, -23C	Aaron Katz	CLOSED
2012	13-39C	Frank Wright	CLOSED - Not referred to Commission, dismissed RFO in its entirety
2013	13-07C, 08C, -11C	Aaron Katz	CLOSED - Not referred to Commission, dismissed RFO in its entirety
2013	12-72C, -73C, -74C	Frank Wright	CLOSED

**APPENDIX ITEM
B**

**APPENDIX ITEM
B**

JASON D. GUINASSO

JGUINASSO@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS



Jason D. Guinasso is the Managing Partner of the Firm's Northern Nevada offices in Reno and Incline Village. Licensed in Nevada (2003) and California (2004), Jason is a solutions-driven attorney committed to adding value to the clients and communities he serves. Jason delivers outstanding, high quality, and comprehensive legal services. He collaborates with his clients to develop and implement sound strategies that address each unique issue and situation presented. Jason always strives to help his clients resolve their legal issues quickly and economically without litigation, while concurrently positioning them for success in the event that litigation becomes necessary. Jason's law practice includes:

- Employment and Labor Law
- Human Resources Support
- Workers' Compensation
- Civil Litigation
- Products Liability
- Government Affairs and Legislative Advocacy
- Public Entity Law
- Public Interest and Nonprofit Organization Law
- Churches and Ministries
- Pro-life Advocacy
- First Amendment Free Exercise

Additionally, Jason has maintained a significant appellate practice, which includes petitions for judicial review of administrative decisions, extraordinary writs, and appeals to the Nevada Supreme Court.

Jason is also regularly engaged as a speaker and provides training on a broad range of subjects, including:

- Prevailing Wage Law
- Employment Law Annual Update
- Employment Law Legislative Update
- Employment Law Basics
- Fundamentals of Employment Law
- Nevada Workers' Compensation Law Overview
- Workers Compensation Update in Nevada
- Workplace Investigations
- Gender Identity and Expression in the Workplace
- Training for Law Enforcement Regarding Internal Affairs Investigations
- Recruitment, Hiring, Development, and Termination
- Substance Abuse in the Workplace
- Church Law: Lecture on Developments in Law, Emerging Legal Risks and Threats, Best Practices for Churches and Ministries
- Moot Court Seminars for HR professionals
- Role Play Training for HR Professionals
- Religious Liberty
- Nevada Open Meeting Law Training
- Trustee and Board Member Training

AREAS OF PRACTICE

Employment & Labor Law
Civil Litigation
Administrative &
Regulatory Law
Public Entity Law
Public Interest & Nonprofit
Organization Law

775.853.8746
HUTCHLEGAL.COM

JASON D. GUINASSO (CONTINUED)

Jason is dedicated to serving our community by providing pro bono legal services to faith-based organizations, non-profits, and civic organizations. In this regard, Jason serves on the Nevada State Public Charter School Board as Board Member appointed by the Honorable Governor Brian Sandoval.

He also has served as legal counsel for the Incline Village General Improvement District, North Lake Tahoe Fire Protection District, Tahoe Douglas Fire Protection District, the Reno Police Protective Association, and Washoe County Sheriff's Deputy Association. He is the legal advisor to Crisis Pregnancy Center, Awaken, I.N.C., the Christian Management Association, Reno Christian Fellowship, and Pathfinders Children's Ministry, as well as many other organizations in Nevada that minister to people in need, influence the development of law and policy, and provide leadership. Jason is also an Allied Attorney with the Alliance Defending Freedom and has received recognition in the ADF Honor Corp for hours of pro bono service provided, specialized training regarding defending the right to life and defending religious liberty.

Jason has been married to his best friend and law partner, Kim Marsh Guinasso, since 1994. They have two amazing children, Robbie (21) and Adeline (14). They enjoy spending time with their dogs, cats, and four alpacas, traveling the globe, and hiking, fishing, bird watching, and camping throughout Northern Nevada and California.

**APPENDIX ITEM
C**

**APPENDIX ITEM
C**



MARK A. HUTCHISON

MHUTCHISON@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS

As the Firm's most experienced trial lawyer, Mark A. Hutchison brings a mastery of turning complex fact patterns into simple, persuasive trial presentations. Mark first achieved national prominence when he attained one of the largest jury verdicts in the United States while representing the inventor of the microchip in a four-month jury trial. Mark's verdicts and legal expertise have been frequently reported in national and local newspapers and magazines, as well as national and local television, cable, and radio stations. Recognized as both a knowledgeable and experienced counselor and as a skilled and aggressive trial lawyer, he has been a key figure in some of Nevada's most significant governmental activities at the intersection of law and politics. Mark was appointed as special lead counsel by two Nevada governors to represent the State of Nevada in the national litigation challenging the constitutionality of the proposed federal healthcare laws. Mark was appointed by a third governor to serve on the Ethics Commission for the State of Nevada, where he served for six years as a member and Chairman. Mark has served on numerous boards and commissions, including President of the Federal Bar Association and currently is a member of the Executive Committee of the Litigation Section of the State Bar of Nevada. In 2012, he was elected to the State Senate where he serves on the Committee on Judiciary and on the Committee on Commerce, Labor, and Energy. The Nevada Legislature is a true part-time citizen legislative body.

Mark has over 20 years of experience handling complex and high-stakes litigation. He has represented companies and individuals in a broad range of industries and practice, including business litigation, complex tort litigation, constitutional litigation, trust and probate litigation, professional liability defense, and appellate litigation.

Mark is an AV-rated attorney by Martindale-Hubbell®. He has been recognized repeatedly by Best Attorneys in Nevada, as Mountain States Super Lawyer, as Nevada's Legal Elite by Nevada Business Magazine, and Best of the Bar by Las Vegas Business Press. Mark received his J.D., magna cum laude, from Brigham Young University, where he earned the high academic distinction of the Order of the Coif and served as Lead-Articles Editor of the Law Review. Following law school, Mark clerked for the Honorable Kenneth F. Ripple of the United States Seventh Circuit Court of Appeals located in Chicago. After his clerkship, Mark practiced for the national law firm of Kirkland & Ellis in both Chicago and Los Angeles.

Most importantly, Mark enjoys spending time with his wife, Cary, and their six children. Despite a very busy schedule, he stays involved in his children's lives by coaching their sports teams, serving as a leader in the Boy Scouts program, and participating in their extracurricular activities. Mark is an avid runner, reader, and writer. He also enjoys serving in his church and participating in political life.

Representative Engagements

Mark has tried numerous cases in both state and federal courts and before administrative agencies. His cases include:

Serving as lead trial counsel in a 17-week jury trial (after 10 years of litigation) against the State of California's taxing authority involving numerous torts and resulting in a jury verdict in the client's favor of over \$138 million in compensatory damages and \$250 million in punitive damages—one of the largest jury verdict awards to a single plaintiff in U.S. history—after the Nevada Supreme Court and United States Supreme Court affirmed the client's right to proceed to trial despite constitutional defenses asserted by the taxing authority in *Hyatt v. Franchise Tax Board*, Case No. A382999 (Dept. 9, Las Vegas, Nev. 2008).

AREAS OF PRACTICE

Business & Complex
Tort Litigation

Constitutional
Litigation

Trust & Probate
Litigation

Professional Liability
Defense

Appellate Litigation

Election Law &
Government Ethics



702.385.2500
HUTCHLEGAL.COM

CONTINUED ON BACK...

Appointed by two governors to serve as special lead counsel for the State of Nevada in challenging the constitutionality of the Patient Protection and Affordable Care Act ("ACA") following the Attorney General's refusal to represent Nevada in the federal litigation, Hutchison served as counsel for the two years of litigation involving 25 other states, which proceeded from U.S. District Court through the U.S. Court of Appeals and eventually to the U.S. Supreme Court in *State of Florida, et al. v. Sebelius*, Case Nos. 11-393 & 11-400 (U.S. Sup. Ct. 2012).

A one-week arbitration trial in contract dispute between world-renowned UFC mixed martial arts fighter and his manager resulting in arbitration award of approximately \$1 million in client's favor in *Strategic Leadership Services, Inc. et al. v. St-Pierre*, (JAMS Arbitration, Las Vegas, Nev. 2013).

A two-week trial before a three-judge arbitration panel regarding claims by a shareholder against officers and directors of an energy company raising issues of corporate governance, breach of fiduciary duties, and buy-out of minority interest resulting in a judgment in favor of clients in *Mitchell v. Freeman, et al.*, Case No. A503996 (Dept. 20, Las Vegas, Nev. 2009).

A three-week jury trial involving a wrongful death claim arising from alleged abuse and improper care of a nursing home resident where the plaintiff requested \$6 million in closing arguments and the jury returned a verdict for \$300,000, nearly half of the amount the client offered to settle the case before trial in *Delmar Gardens of Green Valley, Inc. adv. Volk*, Case No. A444157 (Dept. 13, Las Vegas, Nev. 2004).

Serving as lead trial counsel for the Republican Party of the State of Nevada in a lawsuit challenging the constitutionality of the federal congressional and state legislative boundaries following the legislature's failure to pass redistricting legislation before the First Judicial District Court and the Nevada Supreme Court resulting in superior boundaries to those vetoed by governor in *Guy, et al. v. Miller*, Case No. 11-OC00042-1B (Dept. I, Carson City, Nev. 2011).

A Federal-Court trial between two national pharmaceutical companies concerning a non-competition and business interference dispute resulting in a settlement during trial favorable to the client in *Micro Bio-Medics, Inc., et al. v. PSS World Medical, Inc.*, Case No. CV-S-03-0998-RCJ-(RJJ) (U.S.D.C., Las Vegas, Nev. 2005).

A week-long trial involving breach of contract between medical services provider and a PPO resulting in a judgment in the client's favor totaling nearly \$1 million and more than ten times the amount offered before trial in *Convention Center Drug, Inc., et al. v. h/mx Health Management Solutions, Inc., et al.*, Case No. A419252 (Dept. 15, 2005).

A one-week trial involving allegations of products liability and negligence against the client, a major high reach equipment rental company, and resulting in a judgement favorable to the client in an amount of approximately ten-percent of what plaintiff demanded to settle before trial in *Ahern Rentals, Inc. adv. Guy DePew, et al.*, Case No. Case No. CIV227292 (Superior Court, Semi Valley, Cal. 2004).

A four-week jury trial involving a \$120 million securities fraud action with the jury returning a defense verdict in the client's favor in *In re American Pacific Securities Litigation*, Case No. CV-S 93-576-PMP (U.S.D.C. Las Vegas, Nev. 1995).

A four-week jury trial in a multi-million dollar action involving construction and product defects resulting in a jury verdict in the client's favor in *Nemex Associates, et. al. v. PriMerit Bank*, Case No. CV-S-92-507-HDM (U.S.D.C. Las Vegas, Nev. 1994).

A jury trial where the client's damages were contained arising from a negligence action in *Hirschi Masonry, Inc., Darrel Trowbridge adv. Schilling*, Case No. A373376 (Dept. 9, Las Vegas, Nev. 1999).

A two-week jury trial where plaintiff requested \$7.5 million in closing arguments in a negligence action and the jury returned a defense verdict in favor of the client in *Sears Roebuck & Co. adv. Alan Chenin*, Case No. A353747 (Dept. 3, Las Vegas, Nev. 1999).

A one-week jury trial where the jury awarded the plaintiff half of the client's offer of judgment in a negligence case in *Sears Roebuck & Co. adv. Richard Jergis*, Case No. A389161 (Dept. 9, Las Vegas, Nev. 2000).

A jury trial in a multi-million dollar action involving construction defects where the client—a developer of a large multi-family complex—favorably settled the case after four weeks of trial in *KCN Partnership adv. Opulence Homeowners Association*, Case No. A408661 (Dept. 13, Las Vegas, Nev. 2001).

A bench trial involving alleged damages for constructive trust and interference with prospective business advantage and profit resulting in defense judgment in client's favor in *Conte et. al adv. Reed*, Case No. A416459 (Dept. 3, Las Vegas, Nev. 2002).

**APPENDIX ITEM
D**

**APPENDIX ITEM
D**

JOHN T. STEFFEN

JSTEFFEN@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS



AREAS OF PRACTICE

Personal Injury
Landlord/Tenant
Healthcare
Professionals
Advocacy



702.385.2500
HUTCHLEGAL.COM

John T. Steffen is a shareholder and co-founder of the Firm and an AV-rated attorney by Martindale-Hubbell®. In 2010, John was featured in the Las Vegas Business Press as being among Nevada's top practitioners. In 2011, John was featured on the cover of Nevada Business Magazine for receiving the most votes from his peers and being named among Nevada's "Legal Elite." Jeffrey J. Steffen is the Chair of the Firm's Business Transactions practice group. As an Of Counsel member of the Firm, Jeff focuses his practice in the areas of corporate and commercial law, landlord/tenant law, asset protection and business planning, real estate, and construction law.

For the past 10 years, John has been the managing partner at Hutchison & Steffen. During this time, the firm has grown from approximately 8 attorneys to almost 40. John believes that the success of the firm comes from an unusually positive work environment and an absolute commitment from every lawyer to deliver the best legal product at a fair cost.

John received his B.A. in Speech Communications from Brigham Young University. While attending college, John took numerous public speaking and debate classes, which made attending law school an easy transition. John graduated from the University of the Pacific, McGeorge School of Law. During law school, John was recognized as the top oral advocate in his moot court class and was awarded the Emil Gumpert Moot Court award.

John is a well recognized expert in landlord/tenant law. He is called upon regularly by the judiciary and legal educators to participate in landlord/tenant educational programs. John is admitted to practice in both the state and federal courts of Nevada. He is a member of the American Bar Association and the Association of Trial Lawyers of America.

John's main priorities outside the office are his wife and five children. He enjoys coaching his kids in basketball and playing golf. He believes his professional success lies in his ability to work hard and work well with others.

Representative Engagements

Lead trial lawyer in hundreds of trials representing commercial and residential landlords obtaining favorable verdicts on behalf of client.

Multiple verdicts and settlements in excess of \$1 million in various tort and personal injury cases.

**APPENDIX ITEM
E**

**APPENDIX ITEM
E**



KIMBERLY MARSH GUINASSO

KGUINASSO@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS

As an Of Counsel member of the Firm, Kimberly Marsh Guinasso focuses primarily in the areas of administrative and regulatory law, election, campaign, and political law, and advising local governments. Formerly Legal Counsel and Bill Drafting Advisor to the Nevada Assembly, Kim has extensive experience in drafting legislation and providing legal analysis covering a wide range of issues including state and local taxation, government finance, transportation, public works projects, elections, campaign finance, eminent domain, utilities, water, worker's compensation, administrative law, and professional boards.

Kim received her law degree from Duke University School of Law in Durham, North Carolina, and her Bachelor of Arts degree from Pepperdine University in Malibu, California. Kim serves as legal counsel, pro bono, for several charitable and faith-based organizations.

Kim is a proud native Nevadan who has a particular affection for the rural parts of our great State. She enjoys skiing, water sports, hiking, traveling, and raising a menagerie of many animals and a few kids. Kim and her husband are the parents of two children.

AREAS OF PRACTICE

Administrative
& Regulatory Law

Election, Campaign,
& Political Law

775.853.8746
HUTCHLEGAL.COM

APPENDIX ITEM F

APPENDIX ITEM F

ERIC C. WERNER

EWERNER@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS

Eric C. Werner is an associate of the Firm's Northern Nevada litigation department, focusing primarily in employment law, commercial litigation, and insurance defense.

Originally from San Francisco, California, Eric completed his undergraduate studies at San Diego State University, receiving his Bachelor of Science in Integrated Marketing and a minor in Political Science. In 2013, Eric received his Juris Doctorate from the University of San Francisco, where he was involved in the Investor Justice Clinic and Intensive Advocacy Program.

Eric is licensed in both California and Nevada, and practices predominantly in the Firm's Reno and Lake Tahoe offices. Eric focuses on helping individuals, government entities, and commercial clients protect their interests through aggressive litigation advocacy and strategies while endeavoring to provide his clients with dynamic legal representation tailored to the specific needs of their industry.

Eric is heavily involved in providing community service to members of the Lake Tahoe Basin, through programs such as SOS Outreach and Project Mana. Eric is an avid outdoorsman and in his free time enjoys backcountry skiing, wakeboarding, and rock climbing.

AREAS OF PRACTICE

Employment & Labor Law

Business Law &
Commercial Litigation

Insurance Litigation

775.853.8746
HUTCHLEGAL.COM

**APPENDIX ITEM
G**

**APPENDIX ITEM
G**

DANIEL H. STEWART

DSTEWART@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS



AREAS OF PRACTICE

Administrative Law
Election, Campaign, &
Political Law
Constitutional Law
Corporate &
Commercial Law

Daniel H. Stewart is a partner with Hutchison & Steffen, where he leads the Firm's Election, Campaign, and Political Law practice. Daniel is also a member of the Firm's strong Administrative Law practice, which represents clients before government agencies, boards, and commissions. Whether in the courtroom or before a government entity, Daniel has significant experience helping clients successfully navigate a wide range of complex legal issues.

A native Nevadan, Daniel began his law practice with a well-regarded Nevada law firm and expanded his practice with a major national law firm in the areas of civil and constitutional litigation, administrative law, and corporate law. Later, he joined one of the nation's premier political consulting firms as in-house counsel and represented clients at the state and federal level.

Prior to joining Hutchison & Steffen, Daniel served on Nevada Governor Brian Sandoval's senior staff as general counsel and as the Governor's liaison to numerous executive branch agencies and departments. Before his time as Governor Sandoval's chief counsel, Daniel represented many of Nevada's elected leaders, including the Governor, U.S. Senator, Lt. Governor, Attorney General, and Nevada Republican Senate and Assembly Caucuses. He also served both the Speaker of the Assembly and the Majority Leader as general counsel and chief policy advisor. Additionally, Daniel represented two presidential campaigns in Nevada as lead counsel.

Daniel has outstanding academic achievements and a wealth of professional experience. He graduated cum laude from Brigham Young University with a BA in History. Daniel received a Masters in History from the University of Wisconsin-Madison. He then graduated from the prestigious University of Chicago Law School in 2008.

When not working, Daniel enjoys spending time with his wife and their three children, studying constitutional history and law, collecting and reading books in all genres, traveling, and following UNLV sports.

702.385.2500
HUTCHLEGAL.COM

**APPENDIX ITEM
H**

**APPENDIX ITEM
H**

JOSEPH R. GANLEY

HUTCHISON & STEFFEN

ATTORNEYS

JGANLEY@HUTCHLEGAL.COM



AREAS OF PRACTICE

Business & Commercial
Litigation
Construction Law
Corporate &
Transactions
Employment Law
Healthcare
Professionals
Advocacy
Insurance Defense
Real Estate Law
Trust & Probate
Litigation



702.385.2500
HUTCHLEGAL.COM

Joseph R. Ganley is a senior litigation partner with the Firm, and an AV-rated attorney by Martindale-Hubbell®. He practices in virtually every aspect of business and commercial litigation, including real estate, construction, employment, intellectual property, insurance, transportation (Carmack Amendment), casino markers, reverse mergers, healthcare, probate, corporate and transactional, mechanic's lien, and contract litigation. Joe was raised in Weymouth, Massachusetts, an historic town founded in 1622 located 20 miles south of Boston. After graduating near the top of his high school class, Joe matriculated at Middlebury College in Vermont. He was a member of the football and track teams, and after he was graduated in 1987, he stayed at Middlebury as an assistant football and baseball coach. He spent another year teaching and coaching at Hingham High School in Massachusetts before heading to New York City to start his legal career at the international law firm of Davis Polk & Wardwell. Joe attended San Diego's California Western School of Law for his first year of law school. After placing near the top of his class, he transferred to Boston University School of Law. He was named to the Dean's List and Law Review at California Western. At Boston University, he received the American Jurisprudence Award in Trial Advocacy and he was a Northeast finalist in the ATLA National Trial Team Competition. As a law student, Joe clerked at the United States Attorney's Office in Las Vegas and, after graduating in 1994, he joined a prominent Nevada law firm. He is admitted to practice in both the state and federal courts of Nevada and Massachusetts, and the U.S. Ninth Circuit Court of Appeals.

He remains an avid Boston sports fan and still holds season tickets to the New England Patriots, Boston Bruins, and Boston Red Sox.

Mr. Ganley has significant trial experience and has successfully litigated a variety of business and commercial cases, including most recently a complete defense verdict in a three-week trial involving non-competition, trade secret, and employment law issues in *Western Technologies, Inc. v. Agra Earth and Environmental, Inc.*, Case No. A368873 (Dept. 12, Las Vegas, Nev. 2006) (plaintiff sought several million dollars in compensatory and punitive damages, but received zero).

Mr. Ganley also achieved a groundbreaking victory for the client in a two-week trial involving esoteric healthcare and insurance issues pursuant to Nevada's Prompt Payment Act that resulted in a judgment of close to \$1 million in a case where the defendant offered \$400 in settlement in *Option Care of Nevada v. Nevada Care, Inc.*, Case No. A419252 (Dept. 15, Las Vegas, Nev. 2005).

He achieved a complete defense verdict in a multi-million dollar, two-week trial involving complex application of lending regulations pursuant to the United States Department of Housing and Urban Development rules in *James Cone v. Centennial Mortgage, Inc.*, Case No. A386514 (Dept. 3, Las Vegas, Nev. 2003.)

CONTINUED ON BACK...

0616

Mr. Ganley has also obtained numerous TROs and injunctions including, *Smedley v. GVS, Inc.; Crevoiserat, et al.*, Case No. A541767 (Dept. 10, Las Vegas, Nev. 2007) (defeat of movants' non-competition agreement).

Eldorado Resorts, Inc. v. Consolidated Resorts, Inc., Case No. A525862 (Dept. 21, Las Vegas, Nev. 2006) (defeat of plaintiff's non-competition agreement).

Roddy v. Consolidated Resorts, Inc., Case No. A526620 (Dept. 10, Las Vegas, Nev. 2006) (enforcement of client's non-competition agreement).

Kokos v. Southern Nevada Environmental, Inc., Case No. A472722 (Dept. 2, Las Vegas, Nev. 2006) (enforcement of client's non-competition agreement).

He helped obtain a favorable settlement on the eve of trial in a multi-million dollar breach of contract action in *Olen Residential Realty Corp. v. Network Multifamily Security Corp.*, Case No. CV-S-00-0411-PMP (U.S.D.C., Nev. 2002).

Mr. Ganley also achieved favorable results in a host of other cases: *Nevada Eye Care v. Snyder*, Case No. A585382 (Dept. 11, Las Vegas, Nev. 2009) (non-competition case); *McMickle v. Nevada Eye Care*, Case No. A449187 (Dept. 2, Las Vegas, Nev. 2002) (non-competition case).

Bosma v. Clark County, Case No. 98-A386269 (Dept. 3, Las Vegas, Nev. 2001) (eminent domain case).

General Electric Capital Corp. v. Footstore, Inc., Case No. CV-S-00361 PMP (RJJ) (U.S.D.C., Las Vegas, Nev. 2000) (corporate financing dispute).

Ambos v. Southern Nevada Environmental, Inc., Case No. A400358 (Dept. 18, Las Vegas, Nev. 2000) (enforcement of client's non-competition agreement).

Harley Davidson v. Hawg Heaven, Case No. CV-S-97-00880-DWH (RJJ) (U.S.D.C., Las Vegas, Nev. 2000) (trademark infringement case – judgment in client's favor for over \$6,000,000).

Shree Satya Panduranga Inc. v. Vaswani, Case No. 00-A-416731 (Dept. 17, Las Vegas, Nev. 2000) (business fraud case).

Odyssey Transport, Inc. v. Northwest Jet Sales and Leasing, Inc., Case No. CV 99-12404 (Las Vegas, Nev. 1999) (business financing case).

Porter v. Turtlestop, Inc., Case No. A404587 (Dept. 18, Las Vegas, Nev. 1999) (corporate partnership dispute).

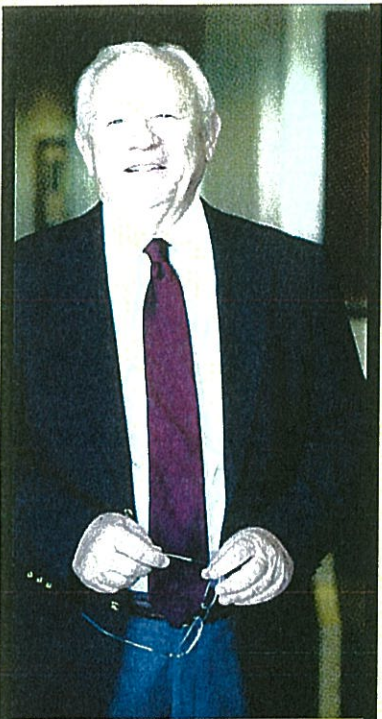
Pacific Southwest Development v. Spencer, Case No. 98-A395977 (Dept. 5, Las Vegas, Nev. 1998) (defamation case) s, Nev. 2002).

Frank Scott v. Moors & Cabot, Case No. CV-S-97-00195 DWH (LRL) (U.S.D.C., Las Vegas, Nev. 1997) (mining and financial disputes).

He was third-chair of a four-week federal jury trial in a multi-million dollar action involving construction and product defects resulting in a verdict in the client's favor in *Nemex Associates, et.al. v. PriMerit Bank*, Case No. CV-S-92-507-HDM (U.S.D.C., Nev. 1994).

APPENDIX ITEM I

APPENDIX ITEM I



THOMAS L. ROBERTS

TROBERTS@HUTCHLEGAL.COM

HUTCHISON & STEFFEN
ATTORNEYS

Thomas L. Roberts is a partner with Hutchison & Steffen, having practiced law for more than 40 years. His practice focuses in the areas of real estate, corporate and commercial law, including contracts, mergers, and acquisitions. He is admitted to practice in Nevada, Arizona, and Utah. He is also a member of the Clark County Bar Association.

Thomas is a graduate of Brigham Young University and the University of Utah School of Law. Prior to attending law school, Thomas served as a First Lieutenant Infantryman in the United States Army, with service in the Republic of South Vietnam.

In addition to his legal career, Thomas is a former Vice President of Harshaw Management, Inc., an affiliate corporation of The Cambridge Companies.

AREAS OF PRACTICE

Real Estate
Business Law &
Commercial Litigation

702.385.2500
HUTCHLEGAL.COM

APPENDIX ITEM J

APPENDIX ITEM J



C. MICHAEL RASMUSSEN



MRASMUSSEN@HUTCHLEGAL.COM

C. Michael Rasmussen is a partner with Hutchison & Steffen, with a practice focused on transactional law, including asset planning, protection, and preservation, as well as overseeing large and complex real estate matters. He has nearly 20 years of experience in law in Nevada. Prior to joining Hutchison & Steffen, Michael practiced with one of the largest firms in Nevada and with the largest homebuilder in the nation. He is admitted to practice in Nevada.

Michael earned a Bachelor of Arts degree from Brigham Young University, and his Juris Doctorate from the University of Utah S.J. Quinney School of Law. In addition to his legal work, Michael speaks Japanese.

AREAS OF PRACTICE

- Real Estate
- Estate Planning
- Business Law & Commercial Litigation
- International Business
- Immigration

702.385.2500
HUTCHLEGAL.COM

**APPENDIX ITEM
K**

**APPENDIX ITEM
K**

Scope of Service	Jason Guinasso	BUSINESS LAWYER	DEFENSE LITIGATOR	INTELLECTUAL PROPERTY LAWYER	ADMIN STAFF	TOTAL
Attending regular Board of Trustee meetings and advise the Board on agenda items and procedural matters, including the Nevada Open Meeting Law						
Review and preparation, based on published agenda for each regular Trustee meeting, and active engagement during the meeting for the listed topics, to the extent the application of Nevada Revised Statutes or related legal matters could affect actions or deliberations on those agenda items.	170.00	5.00	0.00	1.00	2.00	178.00
Provide guidance and training regarding Nevada Revised Statutes 318 and other legal requirements imposed by statute and common law.	20.00	0.00	0.50	0.00	0.00	20.50
Provide designated office hours or times of availability at the District's Administrative Offices, as agreed to with the General Manager and/or the Board of Trustees. For purposes of this proposal, the initial request is two (2) blocks of four (4) hours per month	170.00	0.00	0.00	0.00	0.00	170.00
Draft, review and/or revise documents such as legal memos, contracts, ordinances, resolutions						
Drafts, finished documents or comments on contracts as presented, to assist staff with the execution of transactions under District policies, practices and procedures.	100.00	1.00	1.00	0.00	25.00	127.00
Represent the District in litigation and/or act as liaison to outside counsel*	40.00	0.00	0.00	0.00	2.00	42.00
Perform legal work related to land use issues	40.00	1.00	0.00	0.00	0.30	41.30
Provide clear and concise legal advice and consultation as requested, to the governing body and staff. Response is required within a mutually-agreed upon timeframe (including, but not limited to reviewing Open Meeting Law Complaints**, and providing responses thereto, reviewing public records requests, and providing responses thereto, assisting operating departments with regard to employee disciplinary actions)						
Research special district or other legal matters as requested by the Board of Trustees or the General Manager	190.00	2.00	0.00	0.00	140.00	332.00
Closed litigation sessions with the Board of Trustees as needed.	10.00	0.00	0.00	0.00	0.00	10.00
Prepare Annual Report on litigation matters, including status or resolution by matter	20.00	0.00	0.00	0.00	2.00	22.00
						942.80

*This calculation does not include the estimate of services outside of the scope of the general retainer defined as "Additional Services." Approximately 200 additional hours were billed in 2017-2018 at a highly discounted rate of \$150.00 per hour related to litigation matters.

** It is proposed that Open Meeting Law Complaints are charged at a flat fee, as referenced in the proposed Legal Services Agreement.

**APPENDIX ITEM
L**

**APPENDIX ITEM
L**

RETAINER AGREEMENT

By and Between

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

And

THE LAW OFFICES OF HUTCHISON & STEFFEN, PLLC

THIS RETAINER AGREEMENT (the "Retainer Agreement") is entered into by and between the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (the "IVGID") and the law firm of HUTCHISON & STEFFEN, PLLC ("Firm") and is effective as of the 1st day of January 2019.

**I.
RECITALS**

WHEREAS, IVGID and Firm desire to engage in a stable and flexible long term contractual relationship whereby IVGID can recognize pricing efficiencies for legal services and the Firm is available to provide service as IVGID Attorney, as well as additional legal services on an as needed basis, in a thoughtful and cost effective manner; and

WHEREAS, IVGID and Firm desire to respectively receive and provide legal services specifically described herein pursuant to this Retainer Agreement;

WHEREAS, IVGID and Firm specifically acknowledge that this Agreement is not an employment agreement and does not establish a relationship of employer and employee between Firm and IVGID, between IVGID Attorney and IVGID, or between IVGID and any Firm Attorney, but defines a relationship between the parties wherein the Firm, its officers and employees, including those designated IVGID Attorney or Assistant IVGID Attorney are in fact independent contactors of IVGID and remain solely the employees of the Firm; and

WHEREAS, Firm reserves its independence to act within the limits imposed by law and professional obligations such that IVGID's policy objectives during the representation will be furthered through means the Firm considers appropriate under its professional obligations after consultation with IVGID and as may otherwise be required by the rules regulating the Nevada Bar.

NOW, THEREFORE, it is agreed as follows:

- 1. RETAINER AGREEMENT.** This Retainer Agreement restates, supersedes, and replaces all prior agreements between the parties concerning the provision of legal services in the manner and under the terms described in this Agreement.
- 2. TERM.** The term of the Agreement shall be for a period of three (3) years, commencing on January 1, 2019, subject to termination, as set forth in Section 10.3 below.
- 3. IVGID ATTORNEY SERVICES.**
 - 3.1. Firm will provide legal services as IVGID Attorney to IVGID relative to the direction of the IVGID General Manager as prescribed under Resolution 1480, the District's personnel management policy, which states, "the General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees."
 - 3.2. IVGID Attorney shall serve as chief legal advisor to IVGID Board of Trustees, IVGID General Manager, and all IVGID departments and offices. IVGID attorney shall represent IVGID in all legal proceedings.
 - 3.3. For purposes of this Retainer Agreement Jason D. Guinasso, Esq., the Managing Partner for the Northern Nevada Officers of the Firm shall be designated as IVGID Attorney ("Designated Lawyer"). The Designated Lawyer of the Firm serving as IVGID Attorney for IVGID may be substituted following notice to the General Manager and IVGID Board Chair.
 - 3.4. Firm shall also designate one or more attorneys, who along with the Designated Lawyer shall serve accompanied by other members of the Firm, and IVGID shall have access to, the complete complement of practice groups and breadth of experience of Firm attorneys along with the full statewide

resources of the Firm.

3.5. The contemplated services described in this Agreement are to be provided in conjunction with efforts of designated officials and staff of IVGID to achieve the goals of IVGID as determined by the IVGID Board and the IVGID General Manager. The Agreement contemplates that the work will be assigned to IVGID Attorney either by IVGID Board or by IVGID General Manager. Such legal services, as enumerated below, are to be provided as IVGID Attorney Legal Services on a monthly retainer basis, and supplemented by additional IVGID Attorney Legal Services, as enumerated below, on an hourly basis as approved by work order. Additional Special Counsel Legal Services will also be provided separately by the Firm or other firms on an hourly basis by separate work orders for special services or as otherwise approved by IVGID Board as provided in Sections 4 and 5 hereof.

3.6. IVGID Attorney Legal Services encompass the following:

3.6.1. Attend one IVGID Board meeting per month.

3.6.2. Attend one IVGID workshop per month;

3.6.3. Review and approve meeting agendas to ensure that they are in compliance with the Nevada Open Meeting Law.

3.6.4. Provide two training sessions, when requested, for IVGID Board and staff each year that will help to reduce questions by IVGID Board and staff about legal issues and reduce IVGID's risk in its operations or, in the alternative, attend up to four additional workshops, retreats or other meetings at the request of the General Manager.

3.6.5. Assist District Clerk with responses to Public Records Requests.

3.6.6. Participate in up to one weekly conference either in

person or via teleconference (as required by IVGID General Manager) at a regular time to be mutually determined by IVGID General Manager and IVGID Attorney that will include IVGID Manager and Department Heads (also referred to commonly as the "Senior Team") to identify and discuss outstanding legal issues, discuss projects both proposed and in development, share information associated with services to be provided by the Firm, and address the means to serve IVGID's legal needs;

- 3.6.7. Participate in one weekly meeting in person or by phone with the General Manager and address legal questions;
- 3.6.8. Participate in bi-weekly meetings with the Director of Public Works and address legal questions;
- 3.6.9. Attend bi-weekly meetings with the Director of Human Resources and address legal questions;
- 3.6.10. Crisis and emergency management, advice and responses, as requested by General Manager, to events that present risks to Staff, Board of Trustees or the District.
- 3.6.11. Receive, analyze and respond to regular electronic communications from Staff and Trustees with requests for basic information and legal advice (responses to complex questions that require research and/or extended responses will not be included in this email and will be charged to the District as "Additional Services")
- 3.6.12. Receive and return phone calls from Staff and Trustees with requests for information or legal advice.
- 3.6.13. Develop and implement a procedure to provide prompt responses to IVGID General Manager and IVGID Board with date stamping (or other tracking for accountability purposes) of all internal requests for legal

services and to coordinate that work with IVGID General Manager's and Board's work-plans and develop appropriate quality control and establish with the Board and IVGID General Manager benchmarks to measure performance under this Agreement;

- 3.6.14. Provide administration and periodic oversight and review of all special counsel engagements (including those involving other law firms or attorneys), or use of consultants necessary to support all special counsel engagements, including review, analysis and recommendation regarding payment of all billings by special counsel, including consultants;
- 3.6.15. Complete preparation, adoption and codification of IVGID Code.
- 3.6.16. Provide legal advice to IVGID Board and participate in individual calls with IVGID Board members in order to provide advice to the Board regarding upcoming IVGID Board agenda items or ethics inquiries and participate in the preparation of agendas for IVGID Board and be prepared to offer legal advice on all agenda items at meetings of the Board or other committees and public bodies the Board shall appoint;
- 3.6.17. Provide to Board and IVGID General Manager a monthly report that describes the status of all outstanding matters and provides such other information regarding the matters being handled by the Firm under this Agreement as requested by the Board;
- 3.6.18. Facilitate the adherence to provisions of IVGID Ordinances, Resolutions and Policies, and drafting appropriate ordinances, resolutions, legislation, service agreements, interlocal agreements, and other documents and instruments to collaboratively and cooperatively achieve IVGID's objectives in the most cost effective and time efficient manner;

- 3.6.19. Provide the Board and IVGID General Manager timely updates regarding changes in the law (legislation or cases) that may affect IVGID operations, policies or activities; and
- 3.6.20. Provide the Board and IVGID General Manager with options to cost effectively handle all legal matters incorporated in this Agreement while retaining the high quality of legal services through the use of forms, the use of lower priced staff, various alternate billing methods including using special counsel, temporary employees, task based billing, or other methods of charging for services or service delivery.
- 3.6.21. IVGID Attorney Legal Services do not encompass or include Additional IVGID Attorney Legal Services or Special Counsel Legal Services described herein, nor bond counsel, disclosure counsel or other legal services not specifically included in this subsection.

4. ADDITIONAL IVGID ATTORNEY LEGAL SERVICES.

- 4.1. Additional IVGID Attorney Legal Services encompass the following:
- 4.1.1. Attend, as reasonably required or requested, all meetings of IVGID Board not described in the foregoing subsection as IVGID Attorney Legal Services, and attend meetings with third parties or IVGID staff and/or IVGID Department Heads, as reasonably required or requested by IVGID General Manager.
- 4.1.2. Represent IVGID in the acquisition and disposition of real property rights and interests in the normal course of business, including the issuance of title insurance commitments and policies;
- 4.1.3. Coordinate, in concert with IVGID Manager, with legal counsel and other professionals representing

- governmental agencies or third parties on routine legal matters affecting IVGID in the normal course of business;
- 4.1.4. Attend Ordinance and/or code enforcement hearings and defend decisions of IVGID General Manager and Senior Staff in court of law and/or before administrative agencies;
 - 4.1.5. Perform other legal services which IVGID and Firm mutually agree are outside the normal and regular scope of day-to-day general counsel services, including special legal projects of a significant nature outside the normal day-to-day representation of IVGID;
 - 4.1.6. Prepare responses to and defend against Open Meeting Law Complaints, Ethics Complaints, and complaints filed with state agencies when said responses are required.
 - 4.1.7. Prosecute or defend litigation as directed by the Board or IVGID General Manager, including mediation, validation proceedings, and arbitrations before administrative boards, arbitrators, mediators, courts of all levels of the county, state or federal governments and report to Council and Manager on that litigation regularly; and
 - 4.1.8. Prosecute or defend appeals in the courts of this state and the federal government and administrative boards having jurisdiction over matters affecting IVGID as directed by the Council or IVGID Manager.
 - 4.1.9. Special Counsel Legal Services described in Section 4 hereof,
 - 4.1.10. Bond counsel and disclosure counsel services.
 - 4.1.11. The provision of Additional IVGID Attorney Legal Services shall be conditioned upon a scope of services as directed or authorized by either IVGID General Manager or IVGID Board, as applicable, and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A", or as otherwise approved by IVGID Board.

5. SPECIAL COUNSEL SERVICES.

5.1. Firm shall also be available to provide Special Counsel Legal Services to IVGID. Special Counsel Legal Services are to be provided on an hourly basis or by task based billing or other billing arrangements as agreed upon by the parties in advance and commenced by separate work orders as described in this Agreement and as agreed by the parties. Such services are of a nature that require recognized expertise, experience, or specialized subject matter knowledge and focus above and beyond routine or normal day-to-day IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services, and shall generally include the following:

5.1.1. Providing advice, research, and assistance on extraordinary IVGID administration or operational matters and negotiations;

5.1.2. Rendering written memoranda or opinions outside the scope of IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services and which expose the Firm to significant liability;

5.1.3. Providing advice and research on the feasibility and legal sufficiency of statutory and alternative revenue sources, including the development or implementation of special assessment, impact fee, user fee, extraordinary revenue, utility fee or rate programs;

5.1.4. Negotiating, preparing, obtaining, delivering, and filing all documents in connection with the closing on any acquisition, contribution, sale, exchange, or disposition of any significant IVGID assets or systems requiring the financing thereof, including real and personal property associated with such IVGID assets or systems;

5.1.5. Nominally acting as a lobbyist before any legislative, administrative, or executive branch of government (such services, if extensive, may require a separate engagement);

5.1.6. Legal formulation, negotiation, drafting, and implementation of special or significant IVGID programs or initiatives;

5.1.7. The provision of Special Counsel Legal Services shall be conditioned upon a scope of services as directed or authorized by either IVGID Manager or IVGID Board, as applicable, and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A", or as otherwise approved by IVGID Board;

5.1.8. Special Counsel Legal Services described in this section do not include bond counsel, disclosure counsel, underwriter's counsel, or other legal services which are already or will be the subject of other separate agreements with IVGID, or are premised upon negotiated fees; or other legal services otherwise subsequently agreed to between the parties or third parties.

6. COMPENSATION FOR PROFESSIONAL SERVICES.

6.1. Firm will be compensated for IVGID Attorney Legal Services at the monthly retainer rate as authorized herein. Firm will be compensated for Additional IVGID Attorney Legal Services and Special Counsel Legal Services at hourly rates as authorized herein. Unless otherwise agreed to by the parties in separate writing, Firm will be compensated for legal services at negotiated and hourly rates as authorized herein.

6.2. The Firm will be compensated for IVGID Attorney Legal Services at the Firm's following monthly retainer rate:

6.2.1. **Twelve Thousand Dollars (\$12,000) per month** to be billed at the beginning of each calendar month for work to be performed and paid within thirty (30) days.

6.2.2. IVGID will provide Jason D. Guinasso, Esq., with a recreation pass and privileges equal to that of a full-time

employee of IVGID during the term of this Agreement.

6.3. The Firm will be compensated for Additional IVGID Attorney Legal Services for hourly work at the following hourly rates:

6.3.1. **A blended rate of \$250 per hour** of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

6.3.2. Firm paralegals or law clerks at the **rate of \$110.00 per hour** (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; Firm agrees to assign matters to paralegals and law clerks to achieve the most cost effective service in IVGID's best interest.

6.3.3. A **flat rate of \$2,500** for preparation of each and every response and defense to each and every Open Meeting Law Complaint, Ethics Complaint, or other complaint filed with any state agency when said response and defense is either requested by the General Manager or required by law. This flat rate does not include legal services and fees associated with hearings, proceedings, petitions, appeals or other litigation arising out of said complaints.

6.3.3.1. With regard to Open Meeting Law Complaints, one response and defense per year will be not be charged at flat rate and will be incorporated into legal services covered under the retainer.

6.3.4. Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk or combination of attorney, paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance. Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to IVGID as is in IVGID's best interest.

6.4. The Firm will be compensated for Special Counsel Legal Services for hourly work at the following discounted and blended hourly rates:

6.4.1. **A blended rate of \$300 per hour** of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

6.4.2. Firm paralegals or law clerks at the **rate of \$110.00 per hour** (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; and

6.4.3. (c) Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to IVGID as is in IVGID's best interest and Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance.

6.5. No attorney time shall be charged for any travel to IVGID or for travel to any meetings of IVGID Board if held within the County.

6.6. The Firm shall also be entitled to receive reimbursement for actual costs incurred such as, long distance telephone charges, overnight delivery charges, and travel expenses (when travel is necessary and requested from outside of Washoe County, Nevada; however, no other overhead charges will be reimbursed for copying, secretarial services or other overhead as those costs are considered a part of the fees paid under this Agreement. No travel expenses will be charged for daily travel within IVGID or for any travel for the purpose of attending and staffing any regularly scheduled meeting of IVGID Board in the Firm's role in providing IVGID Attorney Legal Services.)

6.7. The Firm shall bill IVGID periodically for monthly

retainer and hourly work, but not more often than monthly, and provide an itemized statement of fees for services provided and costs incurred to date. Invoices must be submitted within 60 days of the first billing date in the cycle and all bills for the fiscal year must be submitted within 30 days after the conclusion of that fiscal year with an estimate of that bill's total submitted before the end of the fiscal year as reasonably required by IVGID Manager. All invoices shall include documentation for costs and be submitted to, approved, and promptly processed for payment by IVGID General Manager.

7. USE OF NECESSARY CONSULTANTS OR OTHER SPECIAL COUNSEL; APPROVAL PROCEDURE.

- 7.1. IVGID may necessarily require legal expertise beyond the scope of IVGID Attorney, Additional IVGID Attorney, or Special Counsel legal service roles contemplated herein. Subject to the concurrence or recommendation of IVGID General Manager and, if required, the approval of IVGID Board, the Firm shall have the authority to use or retain on behalf of IVGID such additional consultants, experts, or counsel that it deems necessary to implement the objectives and programs of IVGID. Such approval shall be first requested in writing and shall include a scope of services and method of compensation for each additional consultant, expert, or counsel requested.
- 7.2. IVGID Attorney shall maintain oversight and request and provide to IVGID periodic status reports from either litigation or local counsel in the event of any representation pursuant to this section.
- 7.3. Statements for fees and costs incurred by any approved consultant, expert, or counsel, shall be first reviewed by the Firm for accuracy and completeness and, upon approval, submitted to IVGID Manager and/or IVGID Board for payment.

8. DISCLOSURE.

8.1. IVGID recognizes that the Firm represents other clients in or near Incline Village as General Counsel, including but not limited to the North Lake Tahoe Fire Protection District, the Incline Village Crystal Bay Visitors Bureau and the Tahoe Douglas Fire Protection District.

8.2. The Firm as IVGID Attorney will not represent any client, including but not limited to a municipality, county, local or state government agency or other person or entity in matters which the Firm determines to be directly adverse to IVGID nor will the Firm represent IVGID in matters which the Firm determines to be directly adverse to the interests of any other client of the Firm.

8.3. The rules regulating the Nevada Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest, even though there is some difference in interest among them.

8.3.1. It is also possible that during the course of the Firm's representation of IVGID's interests IVGID may become involved in transactions or disputes with other clients of the Firm in which IVGID's interests are or become adverse to the interests of one or more of the Firm's other clients, whether present or future. If such a conflict between IVGID interests and those of another of the Firm's clients, whether present or future, were to arise, the Firm will promptly notify IVGID of that circumstance.

8.3.2. The Firm reserves the right, on account of any such conflicts of interest, to withdraw from the matter in question and will assist IVGID in securing interim or alternative counsel for the matter in conflict if a conflict waiver is not otherwise permissible under the rules regulating The Nevada Bar.

8.3.3. The Firm represents local governments and private

sector clients throughout Nevada and California, and wishes to be able to consider the representation of other local governments or public sector clients who may have interests that are potentially adverse to IVGID's, but with respect to matters that are unrelated in any way to our representation of IVGID. The ethics rules that govern the Firm permit it to accept such multiple representations, assuming certain requirements are met. Accordingly, during the term of this engagement, the Firm agrees that it will not accept representation of another client to pursue interests that are directly adverse to IVGID's interests unless and until the Firm makes full disclosure to IVGID of all the relevant facts, circumstances, and implications of the Firm's undertaking the two representations, and confirm to IVGID in good faith that the Firm has done so and that the following criteria are met:

- 8.3.3.1. there is no substantial relationship between any matter in which the Firm is representing or has represented IVGID and the matter for the other client;
- 8.3.3.2. any confidential information that the Firm has received from IVGID will not be available to the attorneys and other Firm personnel involved in the representation of the other client;
- 8.3.3.3. our effective representation of IVGID and the discharge of the Firm's professional responsibilities to IVGID will not be prejudiced by representation of the other client; and
- 8.3.3.4. the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances, and implications of the Firm's undertaking the two representations. If the foregoing conditions are satisfied, IVGID agrees that the Firm may undertake the potentially adverse representation and that all conflict issues will be deemed to have been resolved or waived by IVGID.

9. CONTRACT ADMINISTRATION.

- 9.1. In accordance with Resolution 1480, IVGID Board hereby designates its General Manager to provide policy direction and instructions to the Firm in the administration of its duties hereunder, approving and authorizing work orders, the provision of Additional Legal Services and all other matters necessary to administer this Retainer Agreement on behalf of IVGID.
- 9.2. The Firm shall be entitled to reasonably rely upon such direction received from IVGID General Manager.
- 9.3. The Firm will alert IVGID Manager if any project or service it is working on or which it is asked to work on may exceed the budget for the year, or for that project or service and will not proceed to provide services for which it seeks compensation until sufficient funding to pay the Firm for its services for the project or service is approved; unless specifically directed by Board or IVGID General Manager to proceed.

10. GENERAL.

- 10.1. This Retainer Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. In the event of any dispute arising out of or relating to this Retainer Agreement, the parties agree to waive trial by jury and agree that venue shall lie in Washoe County, Nevada. In the case of litigation of such disputes, the prevailing party shall be entitled to recover attorney fees and costs from the other party. This Retainer Agreement may be amended only by a written agreement entered into by the parties.
- 10.2. IVGID General Manager will evaluate the performances of the legal services of the Firm on at least an annual basis and shall review such evaluation with the Firm. The evaluation shall include input from each member of the Board of Trustees, Senior Staff and the General Manager, and shall be

completed by 30 June of each year. More frequent and informal performance evaluations and feedback may be undertaken by District at any time.

10.3. This Retainer Agreement or the appointment of Firm as IVGID Attorney to IVGID may be terminated with or without cause by IVGID Board or upon the hiring of a full-time attorney directly employed by IVGID as IVGID Attorney or by Firm at any time upon one hundred and eighty (180) days written notice.

10.3.1. In the event that IVGID desires to terminate Firm's services with notice of a lesser period, IVGID will provide Firm with a severance payment, equal to the agreed upon monthly retainer, for each month of said specified six (6) month notice period for which notice is shortened and is not given.

10.3.2. Additionally, even if IVGID does elect to seek and obtain either IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services, or both, from an attorney or firm other than Firm, this contract may stay in force and effect so that the Firm is available to provide to IVGID, on an as needed and agreed to basis, supplemental legal services as provided for herein.

10.3.3. In the event of termination, the Firm shall assume responsibility for completion of and shall be compensated for all representation requested prior to the notice of termination and through any prompt transition to termination agreed upon by the parties at the hourly rates agreed upon for Additional IVGID Attorney Legal Services for any remaining IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services and at the rates agreed upon for Special Counsel Legal Services for those services. Provided however, IVGID Council may terminate this Retainer Agreement for breach by the Firm with such notice as may be reasonable under the circumstances.

10.3.4. In the event of termination, with or without cause, the Firm shall be compensated in accordance herewith for approved time and expenses expended prior to the date of termination. This Retainer Agreement may be executed in multiple counterparts.

10.3.5. All original files (their contents), records and documents are the property of IVGID and not of the Firm or its Attorneys and upon termination shall be returned to or delivered to IVGID as IVGID General Manager reasonably directs at the expense of the Firm. The Firm may retain copies as necessary to comply with the Rules of the Nevada Bar.

10.4. This Retainer Agreement shall be effective as of the date first written above and is the entire agreement between the parties concerning the subject matter hereof.

11. APPOINTMENT.

11.1. The IVGID Board hereby appoints Firm as IVGID Attorney for IVGID; this Retainer Agreement shall hereafter provide the terms and conditions for such engagement. Such appointment may be changed or altered from time-to-time by resolution of IVGID Board. As required, IVGID General Manager is directed and authorized to use and consult with Firm for IVGID Attorney Legal Services and Additional IVGID Attorney Legal Services as described herein. Additionally, and as required, IVGID Manager is directed and authorized to use and consult with Firm for Special Counsel Legal Services at a cost not to exceed the delegated purchasing limit of IVGID Manager on any single project or matter. For projects or matters above the then current delegated purchasing limit of IVGID Manager, Special Counsel Legal Services shall be provided by work order or as otherwise authorized and approved by IVGID Board.

EXHIBIT A
EXEMPLARY FORM OF LEGAL SERVICES WORK ORDER No.

[insert an identifying work order number here]

TO:

FROM: IVGID General Manager

1. Scope of Services: [describe whether Additional IVGID Attorney services (general counsel) or Special Counsel Services] are to be performed based upon the description attached hereto (A-1) in a proposal by IVGID Attorney that describes the scope of services, the time for performance, the hourly rates if not as described in the Retainer and which estimates the cost of performance.

2. Compensation: Hourly rates and reimbursement for actual costs as provided in IVGID Attorney Retainer Agreement between the parties, or this Work Order. If different rates from those included in the Retainer agreement are not included in the Scope of Services, then the Retainer rates apply.

3. Work Order Budget: The initial funding authorization or budget appropriation for this Work Order shall not exceed the amount of [amount] or the estimate incorporated in the Scope of Services attached to this Work Order whichever is lower. However, it is understood that the direction of IVGID will control the work effort and additional budget appropriations may be required and authorized.

4. Use of Necessary Consultants: Pursuant to the Retainer Agreement, IVGID confirms, directs, and authorizes the use of (1) [name of consultant] and (2) [name of consultant] and the scope of services and method(s) of compensation necessary to support the provision of legal services and continued assistance to IVGID with the [describe work effort and provide attachment].]

Authorized by:

Accepted by:

Title: IVGID Manager/Mayor Title: Authorized Signatory

Date: ----- Date:

[Attach Scope of Service A-1]

A-1 Attachment to Work Order No. [insert work order number here]

McDonald Carano Proposal Supplement

Michael A. T. Pagni, Partner
mpagni@mcwlaw.com

Reply to: Reno

January 9, 2019

Incline Village General Improvement District
Attn: Susan Herron
District Clerk to the Board of Trustees
893 Southwood Boulevard
Incline Village, NV 89451

Re: Engagement of McDonald Carano LLP

Dear Susan:

We are pleased that Incline Village General Improvement District (“Company”) has decided to engage McDonald Carano LLP (“the Firm”) to represent it with respect to Nevada law matters described below. Experience has shown the attorney client relationship works best when there is a formal, mutual understanding about fees, payment terms and the scope of services to be provided. This letter constitutes the agreement relating to the services our firm has agreed to provide. The terms and conditions of our engagement are as follows:

I. Scope of Engagement

The scope of the Firm’s engagement (the “Engagement”) involves representing the Company as outside general counsel on all Nevada matters as more fully described in the Scope of Services attachment to this letter. If you request our assistance with any litigation, we may also request a separate engagement letter for such work. The services to be provided by the Firm in connection with the Engagement will encompass all services normally and reasonably associated with this type of Engagement that the Firm is requested and able to provide and that are consistent with its ethical obligations.

II. Personnel

Michael Pagni, Debbie Leonard, Laura Jacobsen, Phil Mannelly and Kelci Binau will be principally responsible for and actively involved in the Engagement. Additional lawyers or paralegals may be involved as needed.

mcdonaldcarano.com

100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100



III. Monthly Retainer, Fees and Expenses

The Included Services described in the attachment will be provided by the Firm for a monthly retainer of \$20,000 per month, plus costs. The Additional Services will be provided by the Firm but are not included in the monthly retainer amount, and will be billed to Company at standard rates, but with 10% discount applied.

Our firm has always operated on the basis that we will deliver the best possible legal services in a timely fashion and at a reasonable price; in return, we request that upon receipt of our statements, you review the statements at that time to determine if you have any questions or comments regarding them. If so, please call us.

IV. Conflict Waivers and Related Matters.

Attorneys owe duties of loyalty and of confidentiality to their clients. It is unavoidable that, from time to time, conflicts of interest develop between or among our clients, or between clients, or former clients, and prospective clients we wish to represent. In these circumstances, we are required, if we are authorized to do so, to disclose the conflicts to our clients, former clients and prospective clients and consult with them and to obtain the clients' or former clients' consents before we may proceed.

The Firm represents a broad base of clients on a variety of matters, including owners of real property within the Incline Village General Improvement District that may pay assessments to and/or receive services from Company. Absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients to choose the Firm as its counsel and preclude the Firm from representing you or other clients in pending or future matters. Given that possibility, and desiring to be fair both to you and other clients, this letter will confirm our mutual agreement that the Firm may represent other present or future clients (including property owners within IVGID) on matters other than those for which it had been or is then engaged by you, including litigation, legal or other proceedings or matters (referred to as "Permitted Representation"). You agree that you will not assert the Firm's representation of you as a basis for disqualifying the Firm from representing another party in any Permitted Representation and agree that any Permitted Representation does not constitute a breach of duty.

If Company becomes directly adverse to a client of the Firm in a specific matter, the Firm will recuse from representing either party absent special circumstances. We recognize that from time to time, Company may desire to engage in transactions with clients of the Firm. Because of our institutional knowledge with some clients, it may be desirable in some

circumstances for our Firm to either jointly represent the parties to facilitate the transaction or it may be desirable for one party to retain separate counsel for the transaction while our Firm continues to represent the other party. In these circumstances, we will consult with you in advance on whether our firm can (or should) engage in a joint representation on the matter, or whether conflict counsel should be retained by Company or the other party and will secure written conflict waivers if and when appropriate. We further agree in any matter in which our Firm is retained in a joint representation or where Company retains separate conflict counsel so that we may continue to represent an existing client, if any litigation arises between Company and such client in connection with that Company transaction, the Firm would decline any request to represent either party in such litigation.

Based upon the disclosure of the names of persons and entities potentially involved in this matter, we have not discovered any conflict which requires further action before undertaking our representation. Please advise us, at or before the time you return the signed copy of this letter, if you know of any other individuals or entities which may be involved in this matter. In addition, please inform us at once if you learn in the future of other persons or entities who may be involved so we can make a conflict of interest search with respect to them.

V. Other Terms.

The general terms and conditions of our representation are set forth in the attached schedule of General Terms and Conditions, which are incorporated into this agreement by reference. If this letter is satisfactory, please confirm your agreement to the terms of this engagement letter and attached schedule by signing this letter and returning it to us in the enclosed envelope. A copy is for your records. If this letter does not accurately reflect your understanding of the terms of our agreement, please call me promptly so that we may discuss it further.

We recognize that you have the opportunity to obtain services from other firms, and very much appreciate that you have chosen our Firm. We will endeavor to represent you promptly and efficiently, and look forward to the opportunity of working with you.

Sincerely yours,

DRAFT

Michael A.T. Pagni, Esq.

**CLIENT'S AGREEMENT TO
TERMS AND CONDITIONS OF REPRESENTATION**

I hereby acknowledge that I have had an adequate opportunity to review and understand the above engagement letter and accompanying schedule of terms and conditions, and that I am duly authorized by Incline Village General Improvement District as its _____, to bind it and execute this Agreement on its behalf. I further acknowledge that I have had the opportunity to consult with counsel of my own choosing prior to executing it. Therefore, on behalf of Incline Village General Improvement District, I agree to be legally bound by the terms, limitations and conditions set forth therein.

DRAFT

Date: _____, 2019.

By:
Its:

GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

- A. Engagement: Incline Village General Improvement District
- B. Monthly Retainer (Included Services)
 \$20,000 per month, plus costs.
- C. Standard Hourly Rates For Personnel (Additional Services)

Partner, Michael A. T. Pagni	\$425.00 per hour
Partner, Debbie Leonard	\$425.00 per hour
Associate, Laura Jacobsen	\$350.00 per hour
Associate, Philip Mannelly	\$300.00 per hour
Associate, Kelci S. Binau	\$225.00 per hour

Others:

Partners	\$300.00 to \$450.00 per hour
Associates	\$170.00 to \$275.00 per hour
Law Clerks	\$150.00 per hour
Paralegals	\$110.00 to 150.00 per hour
Government Affairs Team	\$225.00 to \$275.00 per hour

Additional Services will be billed with a 10% discount off standard hourly rates. Whenever appropriate and consistent with the proper representation of our clients, we use paralegals, investigators, junior attorneys and staff members in order to minimize the impact of the hourly rates of more senior attorneys.

D. Billing Increments: We charge for our time in minimum units of 1/10 hours for Additional Services.

E. Costs and Expenses.

In-office photocopying	\$.25 per page
Mileage	\$.58 per mile
Computerized legal research	\$5.00 per minute

Clerical staff overtime necessary for extraordinary matters will be charged at 1.5 times the base hourly rate. The base hourly rates for clerical personnel presently range between \$15.00 and \$20.00.

F. Billing Statements; Carrying Charges. Our billing statements will normally be rendered to you on a monthly basis. Fees will generally be billed within thirty (30) days following the month in which the services are rendered, and disbursements and other charges will generally be billed within thirty (30) to sixty (60) days after they are incurred by us. Payment is due upon your receipt of our statement, and is not contingent upon the outcome or completion of a matter for which the firm has been engaged. The Firm does not extend credit to clients. If fees are not paid promptly (within 30 days of the date of invoice), a carrying charge of 1.5% per month (subject to adjustment from time to time as indicated in our billing statements) on the unpaid balance of the statement from the date of invoice. Payments will be accepted by cash, check, money order, bank draft, wire transfer and credit card.

G. IOLTA Participation. We will maintain and safeguard a trust account from which any interest earnings are forwarded to the IOLTA program run by the Nevada Law Foundation. Any interest earned on your trust fund balance will be forwarded to the program.

H. Rates Subject to Change. The rates on this schedule are subject to change on thirty (30) days written notice. If you decline to pay any increased rates, we reserve the right to withdraw.

I. No Guarantees. We must emphasize that it is impossible to provide any promise or guarantee about the outcome of your representation. Nothing in this Agreement or any statements by our staff or attorneys constitute a promise or guarantee. Any comments about the outcome of your matter are expressions of opinion only.

J. Communication. During the course of our representation, we will endeavor to keep you fully advised as to the status and progress of this matter and our recommendations as to an appropriate course of action in view of the facts, circumstances and issues involved. We will send copies of all material documents generated in connection with our representation, and I ask that you call me, at any time, should you wish to discuss the matter, our invoices or bills, or any other aspect of this representation. If, for some reason, I am not available, another attorney in this office will generally be available and familiar with the matter sufficiently to consult with you as desired. You agree that all means of communication are, to some degree, susceptible to misdirection, delay or interception, and E-mail, facsimile transmissions and cellular telephone communications present special risks

of inadvertent disclosure. However, in order to maximize speed, efficiency, and convenience of these methods of communication in this matter, you consent to our use of E-mail, cellular phones, and facsimile transmissions communications in representing you in this matter.

K. Fees Disputes. Under Nevada law, you have the right, if you desire, to request arbitration of any fee dispute before a committee selected by the State Bar known as a "fee dispute" committee ("Bar Arbitration"). By signing this engagement letter, you and we agree to submit any fee dispute in this matter to that Bar Arbitration, and if such Bar Arbitration is conducted, they shall determine only the issue of the amount of fees and charges properly chargeable to you, if any, and such Bar Arbitration thereafter shall have no effect on the provisions set forth above which require arbitration before a retired judge or justice of any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud or violation of any statute. Any such claims shall be solely determined in an arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration.

L. Records and File Retention. All records and filed will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy not to retain records for more than seven (7) years from the date the matter is opened. Upon prior written request, we will return records to you prior to destruction. As it is not administratively feasible to advise you of record disposal, we recommend you maintain your own files for reference. If you have any questions concerning record retention, please contact us.

M. Your Responsibilities. You agree to cooperate with us, to keep us informed of all developments material to the Engagement (especially communication to or from other legal counsel, material undertakings, and agreements), to communicate and disclose fully all relevant matters relevant to our Engagement, to abide by this agreement, and to advise the firm concerning any disputed fee or cost charged in this matter. Our firm will rely upon materials and matters provided and communicated to us by you, your agents, and other representatives, as well as your representations to us that arise during the course of our representation of you in this matter. The firm undertakes no obligation or duty of independent inquiry to confirm or verify such representations and matters. It is extremely important that you provide us with complete and accurate information on a timely basis since our representation, analysis and advice to you will be based upon such information, and could change if factual circumstances are different.

N. Termination. A client has a right at any time to terminate our services and representation upon written notice to the Firm, and we may also terminate our services

upon written notice. You remain liable for all unpaid charges for services provided and expenses advanced or incurred prior to the date of termination or withdrawal. If you do not meet your obligation of timely payments or deposits under this engagement letter, we reserve the right to withdraw from your representation on that basis alone, subject to any required judicial, administrative, or other approvals. In the event of termination, you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal. In addition, our representation will end at the earliest of (a) your termination of our representation; (b) our withdrawal or termination; or (c) unless we are engaged to represent you in other matters, upon substantial completion of our work on the Engagement whether or not we send you a letter to confirm the termination of our representation.

O. MERITAS. Our firm is a member of MERITAS ("Meritas") which is a network of over 185 independent commercial law firms located in major cities throughout the world. Meritas members are not engaged in the joint practice of law and do not share fees among themselves. Membership in Meritas gives us, and our clients, access to legal resources in other jurisdictions so that our clients' need for legal services can be handled virtually anywhere our clients conduct business. We will only utilize the services of another Meritas firm in this matter with your express knowledge and consent. Further information about Meritas can be obtained at the organization's website at www.meritas.org.

P. Governmental Affairs. In addition to the services already set forth in this engagement letter, the Firm may need to utilize the expertise of our Governmental Affairs Team to advance the objectives of your engagement with the Firm. Be advised that prior to requesting assistance from the Governmental Affairs Team you will be counseled as to why this is necessary and/or advisable and be given an opportunity to elect their services. The fee for the members of our Governmental Affairs Team is included above.

Q. Written Advices Regarding Federal Tax Issues. Whenever we provide you with written advice concerning the federal tax treatment of an item of income, gain, loss, deduction or credit, the existence or absence of a taxable transfer property, or the value of property for federal tax purposes, we are subject to stringent requirements imposed by the United States Treasury Department on all tax practitioners, including attorneys. These rules cover much more than formal legal opinions and may apply to any writing relating to any Internal Revenue code matter, including communications via e-mail and fax. If we fail to comply with these rules, we may (under certain circumstances) be suspended or disbarred from practice before the Internal Revenue Service, be publicly censured or fined (to the extent that the Secretary of Treasury promulgates regulations requiring any such fines or

penalties). Therefore, if during the course of this engagement, we provide written advice regarding any arrangement the principal purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, such writing must comply with the rigorous standards of review and disclosure (including enhanced factual and legal due diligence) which are now required by the Treasury Department. If tax avoidance is not the principal purpose of an arrangement but is a significant purpose, our written advice must also adhere to the same rules, unless we include a prominent disclosure stating that the writing was not intended or written by us to be used, and it cannot be used by you or anyone else for the purpose of avoiding taxpayer penalties. It is for this reason that certain written communications to you, including emails and faxes, will contain the following disclosure statement: "Any Federal tax advice contained herein is not intended or written to be used, and cannot be used by you or any other person, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Code. This disclosure is made in accordance with the rules of Treasury Department Circular 230 governing standards of practice before the Internal Revenue Service. Any written statement contained herein relating to any Federal tax transaction or matter may not be used by any person without our express prior written permission to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed herein. No advice contained herein may be relied upon or utilized by any person for any purpose except as expressly and affirmatively stated herein without the prior written consent in each instance of a partner of this firm."

R. Miscellaneous. This Agreement is governed by Nevada law and sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing. Each party signing below is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party signing it whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be severable. We are not advising you with respect to this Agreement because we would have a conflict of interest in doing so. If you wish advice, you should consult independent counsel of your choice.



**INCLINE GENERAL IMPROVEMENT DISTRICT
SCOPE OF LEGAL SERVICES**

I. INCLUDED SERVICES

The following services (“Included Services”) will be provided by the Firm and will be included under Monthly Retainer Amount:

- **PUBLIC AGENCY MATTERS**
 - Provide legal representation at all public meetings of Company and its subcommittees
 - Advise and provide legal representation on Nevada Open Meeting Law and Public Records Act compliance, including preparation of agendas
 - Assist Company staff with responses to public records requests
 - Respond to open meeting law complaints arising out of Firm-reviewed and approved agendas or adherence to Firm legal advice.
 - Advise and assist staff regarding records retention issues and civil discovery requests for records in third-party litigation.
 - Provide guidance and training regarding Nevada Revised Statutes Chapter 318
 - Review and negotiate contracts proposed by other parties and propose revisions as necessary.
 - Draft legal documents such as interlocal agreements and contracts with consultants, vendors, service providers or other parties
 - Provide legal representation on drafting and compliance with ordinances, resolutions, and polices of Company
 - Provide legal advice to public officers and public employees on compliance with ethics laws
 - Provide legal representation and advice on risk management and liability issues
 - Assist Company with the administration of contracts.
 - Provide legal advice regarding public procurement and consult with Company relating to bid protests and bid disputes.
 - Attend regular meetings with key Company representatives to keep abreast of status of issues and to consult to avoid potential problems, issues, or disputes.

- Be available “on call” to consult with Company employees on all public agency issues.
 - Monitor and supervise litigation handled by any insurance company-assigned defense counsel.
 - Provide General Manager and Board updates regarding changes in statutory or case law that may affect Company operations or policies.
 - Providing an annual written report to the Company’s financial auditors regarding pending or threatened litigation, claims or assessments.
- LABOR / EMPLOYMENT MATTERS
 - Provide advice and counsel for Company on labor claims and issues.
 - Provide advice and counsel for Company with regard to union actions (pickets, strikes, handbilling, etc.)
 - Provide advice and counsel for Company with regard to employment and human resource matters.
- REAL ESTATE MATTERS
 - Provide legal advice related to land use issues
 - Review and prepare documents for Company’s routine real and personal property purchases and transactions.
- OTHER MATTERS / ISSUES
 - Provide advice, guidance, and counseling to Company on other general matters of the type historically provided to the Company by prior general counsel.
 - Attend Company Board and/or other company meetings as requested.
 - Meet with Company principals for advice and consultation as needed.

II. ADDITIONAL SERVICES NOT INCLUDED IN RETAINER AMOUNT

The following Additional Services will be provided by the Firm but are not included in the monthly retainer amount. All such additional services will be billed to Company at standard rates, but with a 10% discount applied:

- Representation of Company in litigation, administrative, or complex matters (i.e., matters where the firm would typically set up a new matter for and not simply bill under the “general” matter), including representation before Nevada Ethics Commission and responses to Open

Meeting Law or Public Record Act complaints arising from action taken contrary to or without advice from Firm.

- Included Services in excess of 75 hours in a month
- Travel for Company outside of Reno/Carson/Incline area.
- Other additional services not included above as directed by the Company.

III. CLARIFICATIONS, TERMS, AND CONDITIONS.

The Monthly Retainer Amount will be billed to Company at the beginning of each month. The Monthly Retainer Amount will cover all legal fees for Included Services. Direct costs and expenses for services and costs or fees paid by the Firm to third parties are not included in the Monthly Retainer Amount and will be reimbursed by Company separately. Fees and Costs for Additional Services will be billed and paid pursuant to the Firm's standard billing procedures.

Additional services not identified herein will continue to be provided outside of this agreement pursuant to standard billing and payment procedures (minus the 10% discount), unless otherwise agreed to.

After an initial period of 12 months the Parties will evaluate the program to discuss potential modifications to the services provided and/or monthly retainer amount

4843-9278-6821, v. 1

McDonald Carano Proposal



MCDONALD CARANO PROPOSAL
FOR LEGAL AND GOVERNMENT
AFFAIRS & ADVOCACY SERVICES

Incline Village General Improvement District



Michael A. T. Pagni
ATTORNEY

mpagni@mcdonaldcarano.com
775.788.2000

KELCI S. BINAU
ATTORNEY

kbinau@mcdonaldcarano.com
O: 775.788.2000 ■ D: 775.326.4381

Debbie Leonard
ATTORNEY/MEDIATOR

dleonard@mcdonaldcarano.com
O: 775.788.2000 C: 775.636.2635
F: 775.788.2020

mcdonaldcarano.com

RENO | LAS VEGAS

Michael A.T. Pagni, Partner
mpagni@mcdonaldcarano.com

Reply to: Reno

October 18, 2018

Incline Village General Improvement District
Attn: Susan Herron
District Clerk to the Board of Trustees
893 Southwood Boulevard
Incline Village, NV 89451
Phone (775) 832-1207

Re: *Request for Proposal for Legal Services and Government Affairs & Advocacy*

Dear Ms. Herron:

The law firm of McDonald Carano LLP (“McDonald Carano”) is pleased to provide this Statement of Qualifications to the Incline Village General Improvement District (“IVGID”) for professional legal services and government affairs representation. As the largest and one of the oldest law firms in Northern Nevada and a wealth of experience in state and local government services, McDonald Carano is uniquely qualified to be a global provider for the services sought by IVGID.

McDonald Carano LLP is one of the most influential firms in Nevada with more than 50 years of legal practice and 55 attorneys. We are one of the few legacy firms that remains in our state. With offices in Reno and Las Vegas, we provide comprehensive legal counsel and government affairs representation to a broad range of public and private clients alike. In addition to serving as general counsel to special districts and myriad other public agencies across the state, we offer legal services pertaining to business law and commerce; environmental, water and natural resources; real estate, land use and condemnation; administrative, development and construction; personal injury, employment and intellectual property; litigation and dispute resolution; gaming, tax and estate planning; and government relations and advocacy.

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000



We have successfully served as trusted advisers to numerous special districts and public entities. A sampling of such clients includes Truckee Meadows Water Authority, Washoe County Water Conservation District, Carson Truckee Water Subconservancy District, PERS, Tahoe Regional Planning Agency, City of Fernley, Department of Tax, Secretary of State, Office of Governor, Washoe County School Board, City of Reno, City of Las Vegas, Public Charter Schools, State Board of Professional Engineers & Land Surveyors, State Board of Osteopathic Medicine, State Board of Oriental Medicine, State Chiropractic Examiners Board, and the State Board of Podiatry.

Our firm was founded with the philosophy of providing our clients excellent service, while maintaining the highest standards of the legal profession. We excel through the well-roundedness of our attorneys. The firm prides itself on giving back to the Nevada community, and its lawyers and employees participate in diverse civic activities, such as serving as a presidential appointee to the Tahoe Regional Planning Agency, as gubernatorial appointees to various boards and commissions, as directors of many charitable organizations, as elected officials serving in the Nevada Legislature and moving on from the firm to serve as judges in both federal and state courts.

Our response to the IVGID's RFP is set forth in the following pages. We are available for interview on November 1, 2018 between 8am and 3pm, November 5, 2018 between 1pm and 5pm, or November 9, 2018 at any time and would welcome the opportunity to discuss our breadth of experience and qualifications in more detail.

We appreciate the opportunity to submit this response. Please do not hesitate to contact me should you have any questions.

Sincerely,



Michael A.T. Pagni

MATP:mn

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000



**McDonald Carano Proposal
Table of Contents**

Firm Experience 1

Firm Capacity 4

References 5

Estimate of Hours 6

Proposed Compensation. 8

Appendix – Attorney Biographies

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000



Firm Experience

With attorneys licensed in both California and Nevada, McDonald Carano has substantial experience in matters that will be directly relevant to IVGID, including experience representing public agencies and experience on matters involving open meeting laws, purchasing, human resources, land use, condemnation, environmental law, leases, contracts and litigation.

We have a proven track record of providing comprehensive and effective legal and government affairs counsel to special districts and other public agencies on issues associated with operations, administration and regulation. We advise on district formation, policy matters and regulation, employment and labor issues, as well as real estate acquisitions, development and dispositions, public works projects, taxation, land use and construction initiatives.

Our clients in this specialized area of practice have included regional councils of governments, water districts, joint power authorities and transportation, conservation, sanitation, wastewater and community service districts, as well as fire protection, parks and recreation, hospital and resource conservation agencies. We also represent private developers, landowners and privately-held water, wind, solar and other renewable, green and sustainable energy companies.

We advise on public agency-related governance matters, public records requirements, conflicts of interest and other procedural matters, including the introduction and adoption of minute orders, resolutions and ordinances and the scheduling and structure of public hearings, public presentations and elections. We are skilled in all areas of public contracting and bidding, public finance, and the permitting and approval of and compliance with the range of environmental restrictions in large-scale public and public-private development initiatives. We also represent special districts before regulatory bodies and assert and defend their position in courts at the local, state and federal levels.

Our experience representing municipal and governmental entities includes:

- **General Counsel for the Truckee Meadows Water Authority.** The firm has served as general counsel to TMWA since its inception in 2001 as a Nevada joint powers authority comprised of the cities of Reno and Sparks and Washoe County. In that capacity, we have provided all manner of advice on municipal laws, including public contracting and procurement, public works laws and bid procedures, and public property management, merger, acquisition, and disposition, Nevada Open Meeting Law, Nevada public records act, and employment and labor law.

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000

- **Washoe County Water Conservation District.** The firm represents the Washoe County Water Conservation District, an irrigation district organized pursuant to NRS Chapter 539. In that capacity, the firm provides all manner of advice on public property management, Nevada Open Meeting Law compliance and employment and labor law. Additionally, the firm serves as litigation counsel for the WCWCD in its employment and labor law lawsuits, arbitrations and other legal disputes.
- **Incline Village.** The firm represented the interests of Incline Village to establish the State's first General Improvement District ("GID"), thereby creating the Incline Village GID.
- **Tahoe Regional Planning Agency.** The firm represents TRPA in federal court litigation arising from approval of a communications tower. We also note that Bud Hicks, a retired partner currently of counsel with the firm, sits as the Presidential appointee on the TRPA Governing Board.
- **Reno Tahoe Airport Authority.** Michael Pagni has previously served as both inside and outside general counsel to the RTAA. Mr. Pagni's responsibilities included attending board and committee meetings, working with Airport Authority staff and board members on a daily basis on issues ranging from human resource matters to negotiating leases and contracts, rendering opinions on Bylaws and parliamentary procedures, appearing at public meetings, handling court appearances and working with Airport Authority and other governmental agency lobbyists on state legislative issues affecting the Airport Authority. Our firm also previously served as government affairs counsel to the RTAA, representing the RTAA's interests before state and local governmental entities.
- **Reno-Sparks Convention and Visitors Authority.** Mr. Pagni has previously served as outside general counsel to the RSCVA. Mr. Pagni's responsibilities included attending board and committee meetings, Open Meeting Law and Public Record Act compliance, drafting and enforcing room tax regulations, public contracting and procurement, public works projects, and public property management.
- **City of Fernley.** The firm has represented the City of Fernley on various public property management and contracting issues and has advised the City of Fernley on the application of the Consolidated Tax system in Nevada.
- **Litigation Counsel for the Nevada System of Higher Education.** The firm represented the Nevada System of Higher Education in employment litigation from trial through appeals to the United States Supreme Court, successfully prevailing on the merits and obtaining a judgment for attorneys' fees and costs in excess of \$1 million.

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000

- **Counsel to Lyon County in Insurance Coverage Litigation.** McDonald Carano represented Lyon County in an insurance coverage dispute arising from the county commissioners' revocation of a special use permit. McDonald Carano advised Lyon County on the extent of its coverage, brought a declaratory relief action to enforce coverage and negotiated a resolution with the Nevada Public Agency Insurance Pool on Lyon County's behalf.
- **Public Employees Retirement System.** The firm has served as external counsel to the Public Employees Retirement System (PERS), representing PERS on complex litigation matters including public records cases.

The firm is experienced in other specialized areas relevant to the interests of the Incline Village General Improvement District, including:

- **Property Law.** The firm's Real Estate & Land Use Planning practice group represents clients in all phases of zoning, development and real estate transactions, including the negotiation of real estate contracts, leases, easements, licenses and the resolution of real estate contract disputes prior to litigation.
- **Employment and Labor Law, Collective Bargaining.** The firm's Employment and Labor Law Group has extensive experience in employment litigation, arbitration and labor disputes. We assist our clients in the identification, analysis and resolution of all issues raised throughout all phases of the employment relationship.
- **Environmental Law.** The firm's Energy, Environment & Natural Resources Group has extensive experience advising clients on environmental law, water resources, public lands, energy, utilities and minerals.
- **General Tort Law/Litigation.** The firm's Commercial & Complex Litigation Practice Group conducts one of the most comprehensive and sophisticated litigation practices in Nevada.
- **Construction Law.** The firm's construction law attorneys have extensive experience in a diverse range of construction litigation, mediation, and arbitration in the state and federal courts, including drafting and reviewing construction contracts, bid disputes, defective construction claims and payment disputes.
- **Taxation.** The firm's tax attorneys have significant experience with the state and local tax system in Nevada, and includes a former Deputy Attorney General who represented the Nevada Department of Taxation and Nevada Tax Commission, and routinely appears in front of those agencies in legislative and regulatory matters, as well as in contested cases.

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000

Firm Capacities

With more than 65 attorneys and paralegals in offices in both Reno and Las Vegas, McDonald Carano is ideally situated to meet IVGID's legal needs in a timely and cost-effective manner in all commercial and litigation matters that may arise in Nevada.

General Information

- **Reno Office:** 100 W. Liberty Street, Tenth Floor, Reno, NV 89501.
Tel: 775.788.2000; 775.788.2020
- **Las Vegas Office:** 2300 W. Sahara Avenue, Suite 1200, Las Vegas, NV, 89102.
Tel: 702.873.4100; 702.873.9966
- **Website:** www.mcdonaldcarano.com

Point of Contact:

Michael Pagni
McDonald Carano LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
775-788-2000
mpagni@mcdonaldcarano.com
www.mcdonaldcarano.com

Our firm is comprised of individuals with extraordinary accomplishments. Our current and former partners have held high-ranking positions in the Nevada Legislature, been selected for judgeships, chosen to lead some of Nevada's most important government agencies, recruited to oversee high level federal agencies and have served with distinction in the Nevada Air National Guard and other branches of the service, as well as local police and fire departments. Our professionals have been recognized for their work and commitment to the industry and community with numerous awards such as Best Lawyers in America, Captains of Industry and Women to Watch.

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000

The firm can draw on a number of its attorneys to perform the legal services described in the RFP. Attached as Appendix – Attorney Biographies is a summary of the background information for the legal professionals whom we anticipate would provide the majority of services identified by IVGID.

- Michael Pagni, Partner
- Debbie Leonard, Partner
- Lucas Foletta, Partner
- Jessica Woelfel, Partner
- Matt Addison, Partner
- Josh Hicks, Partner
- Philip Mannelly, Associate
- Kelci Binau, Associate

References

Commissioner Vaughn Hartung
Chairman Truckee Meadows Water
Authority
775-328-2007
vhartung@washoecounty.us
Role – Outside Counsel

Mayor Elect Ron Smith
Vice Chairman Truckee Meadows Water
Authority
775-353-2311
rsmith@cityofsparks.us
Role – Outside Counsel

Commissioner Bob Lucey
Washoe County Commission
775-328-2012
blucey@washoecounty.us
Role – Outside Counsel

Mark Foree, General Manager
Truckee Meadows Water Authority
775-834-8009
mforee@tmwa.com
Role – Outside Counsel

Blake Smith
Somerset Development
775-787-4522
Blake@s3devco.com
Role – Outside Counsel

John Marshall, General Counsel
Tahoe Regional Planning Agency
775-303-4882
jmarshall@trpa.org
Role – Litigation Counsel

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000

Estimate of Hours

Scope of Work	Personnel	Estimate of Hours
Provide clear and concise legal advice and consultation, as requested, to the governing body and staff. Response is required within a mutually-agreed upon timeframe.	Personnel identified in RFP response will be assigned depending upon issue and subject matter expertise	As needed.
Attending regular Board of Trustee meetings and advise the Board on agenda items and procedural matters, including the Nevada Open Meeting Law.	Michael Pagni, Debbie Leonard and/or Kelci Binau	10 to 12
Provide guidance and training regarding Nevada Revised Statutes 318 and other legal requirements imposed by statute and common law	Michael Pagni, Debbie Leonard and/or Kelci Binau	As needed; estimated 4 hours
Provide designated office hours or times of availability at the District's Administrative Offices, as agreed to with the General Manager and/or the Board of Trustees. For purposes of this proposal, the initial request is two (2) blocks of four (4) hours per month.	Michael Pagni, Jessica Woelfel, Debbie Leonard and/or Kelci Binau	8 hours
Draft, review and/or revise documents such as legal memos, contracts, ordinances, resolutions	Michael Pagni, Debbie Leonard and/or Kelci Binau	As needed
Represent the District in litigation and/or act as liaison to outside counsel.	Debbie Leonard, Jessica Woelfel, Matt Addison and Phillip Mannelly	As needed

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
 100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000



Estimate of Hours

Scope of Work	Personnel	Estimate of Hours
Perform legal work related to land use issues.	Michael Pagni, Debbie Leonard and Kelci Binau	As needed; estimated 4-10 hours
Research special district or other legal matters as requested by the Board of Trustees or the General Manager.	Personnel identified in RFP response will be assigned depending on issue and subject matter expertise	As needed

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
 100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000



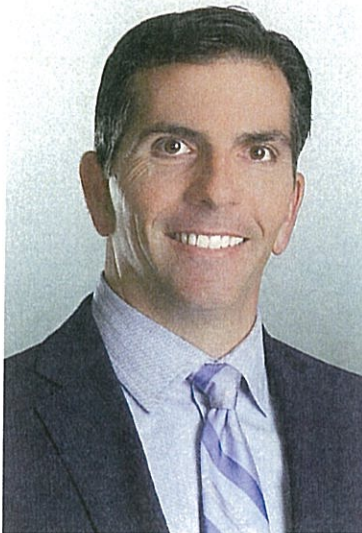
Proposed Compensation

McDonald Carano would be willing to work with IVGID on a flat rate or other fee arrangement consistent with prior budgets and fee arrangements for our legal scope of work, or would be willing to offer discounted rates for services in the range of \$300-350 per hour for partners, \$225 for associates and \$135 for paralegals consistent with our fee arrangements with other non-profit and public entities. To the extent hourly fee arrangements are made, we typically charge for our time in minimum units of one-tenth hours. Our government affairs services are typically billed on a flat monthly retainer. The amount of that retainer is subject to negotiation depending on the needs of IVGID.

In addition to charges for legal fees, McDonald Carano charges for out-of-area travel costs, facsimile transmissions, copies, long distance telephone, overnight mail and other extraordinary expenses. The firm will bill for customary disbursements (costs) necessary on legal matters of the type assigned, including, but not limited to, ground and air courier delivery fees, recording fees, certified copy fees, investigation costs, filing fees, necessary travel expenses, telephone charges, mail charges, computerized legal research, deposition transcripts, telecopying and photocopying.

mcdonaldcarano.com

2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100
100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000



Michael Pagni

Partner

mpagni@mcdonaldcarano.com

Phone 775.788.2000 Fax 775.788.2020

PROFESSIONAL BACKGROUND

Mr. Pagni's practice focuses primarily on real estate and water law, corporate and transactional law, administrative law and government relations. Mr. Pagni serves as outside counsel to several large public agencies in Northern Nevada, and served as general counsel to Governor Jim Gibbons, in his 2006 gubernatorial campaign. Prior to law school Mr. Pagni served as a legislative intern for Senator Harry Reid in Washington, D.C. During law school, he served as a law clerk for the Honorable Melvin Brunetti, United States Court of Appeals for the Ninth Circuit, and the Honorable Howard D. McKibben, former Chief Judge of the United States District Court for the District of Nevada.



Debbie Leonard

Partner

dleonard@mcdonaldcarano.com

Phone 775.788.2000 Fax 775.788.2020

PROFESSIONAL BACKGROUND

Debbie Leonard is a partner based in the firm's Reno office and is co-chair of the firm's Appellate Practice Group. Her practice focuses on litigation and appeals deriving from real property, land use and natural resource disputes. Before becoming a lawyer, Ms. Leonard worked for the United States Forest Service and the National Marine Fisheries Service on resource management issues and environmental assessment. She has also taught science at the secondary and college levels. Prior to joining the firm, she served as a Law Clerk to the Honorable David W. Hagen in the United States District Court, District of Nevada.



Joshua J. Hicks

Partner

jhicks@mcdonaldcarano.com

Phone 775.788.2000

PROFESSIONAL BACKGROUND

Mr. Hicks is the head of the firm's Government Affairs and Advocacy Group and has been practicing law in Nevada since 1998. He has substantial experience with state and local governments, having served as a Deputy Attorney General as well as both General Counsel and Chief of Staff to the Governor. In addition to representing clients before the Nevada Legislature and local governments, Mr. Hicks also represents clients in legal matters including state and local taxation, administrative law, election law, and economic development incentives. He has been lead counsel on seven published cases before the Nevada Supreme Court.



Lucas M. Foletta

Partner

lfoletta@mcdonaldcarano.com

Phone 775.788.2000

PROFESSIONAL BACKGROUND

Lucas Foletta helps clients across a broad variety of industry sectors develop comprehensive strategies to tackle their legal, political and policy challenges in Nevada. Equipped with industry experience and an on-the-ground perspective from his previous work in government, Lucas represents clients before the Nevada Legislature, local governments and state government agencies in a wide array of regulatory and government affairs matters.



Jessica Woelfel

Partner

jwoelfel@mcdonaldcarano.com

Phone 775.788.2000

PROFESSIONAL BACKGROUND

Jessica Woelfel focuses her practice on a broad range of commercial litigation matters, including business torts, contract litigation, employment litigation, and real estate litigation. Ms. Woelfel has substantial experience in all phases of litigation, including investigation, drafting of pleadings, discovery, motion practice, settlement negotiations, and trial. She is licensed in all state and federal courts in Nevada and California, and she regularly litigates issues in both states. Ms. Woelfel also regularly provides general advice and counsel to business and employment law clients. Prior to joining McDonald Carano, Ms. Woelfel was an attorney at the San Francisco office of Sonnenschein Nath & Rosenthal LLP, where she focused on civil litigation and business-related matters.



Matt Addison

Partner

maddison@mcdonaldcarano.com

PHONE 775.788.2000 FAX 775.788.2020

PROFESSIONAL BACKGROUND

A lifelong Reno resident, Matt Addison joined McDonald Carano in 1989. Since that time the firm has expanded, diversified, and the landscape of Nevada has become more technology-centric. Mr. Addison, now the Managing Partner of the firm's Reno Office, is helping to guide the firm into this future with a strategic vision aimed at distinguishing the firm as a bold innovator in the legal industry.



Phillip M. Mannelly

Attorney

pmannelly@mcdonaldcarano.com

Phone 775.788.2000

PROFESSIONAL BACKGROUND

Phillip Mannelly is an associate in the Commercial & Complex Litigation and Construction Law Groups at McDonald Carano, focusing primarily on the construction industry.

Prior to joining McDonald Carano, he served as a Judicial Extern to the Honorable Larry R. Hicks with the United States District Court, District of Nevada. Mr. Mannelly received his J.D. from the University of Notre Dame Law School, where he was a member of the *Notre Dame Law Review*.



Kelci Binau

Attorney

kbinau@mcdonaldcarano.com

Phone 775.788.2000 Fax 775.788.2020

PROFESSIONAL BACKGROUND

Kelci Binau is an Associate in the firm's Business Entities & Transactions and Real Estate & Land Use practice groups. She handles a variety of transactional, land use and real estate matters for clients.

Ms. Binau was a Legal Extern for the Honorable Chief Judge Beesley & Judge Zive's Chambers, U.S. Bankruptcy Court. She conducted legal research of issues presented in motions and preparation of summaries for presentation to judges, prepared memoranda on various legal issues for judges in preparation for hearings, and observed court hearings, oral arguments and discussed with judges the Court's rulings. She was also a law clerk for Demetras & O'Neill and Barbara Gruenewald.

Woodburn & Wedge Withdrawal

Herron, Susan

From: John F. Murtha <JMurtha@woodburnandwedge.com>
Sent: Wednesday, January 02, 2019 1:44 PM
To: Herron, Susan
Cc: Dale Ferguson; Shawn Pearson
Subject: Woodburn and Wedge's Proposal to Provide Legal Services to IVGID

Ms. Herron: I have had an opportunity to discuss IVGID's request that we modify our legal services proposal to incorporate a retainer component into our prior proposal with Dale Ferguson and Shawn Pearson. After discussing the issue, we have decided to withdraw our proposal to provide legal services to IVGID. Our meeting with you and the other IVGID representatives on December 17, 2018, was very informative and helpful to us in understanding IVGID's needs. We have determined that our available resources may not match IVGID's current needs for legal services. Furthermore, if we were to commit to provide the services IVGID may need, we could be jeopardizing our ability to provide timely services to our current public agency clients and in all fairness to them we cannot run that risk.

Woodburn & Wedge Proposal



WOODBURN AND WEDGE

PROPOSAL SUBMITTED IN RESPONSE TO:

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL, LEGAL SERVICES,
RELEASED SEPTEMBER 24, 2018



October 18, 2018

Via Hand Delivery Only

Incline Village General Improvement District
Attention: Susan A. Herron,
District Clerk to the Board of Trustees
893 Southwood Boulevard
Incline Village, NV 89451

Re: Proposal to Provide Legal Services to the District

Dear Ms. Herron and Selection Committee Members:

I am the Managing Shareholder of Woodburn and Wedge. Woodburn and Wedge is pleased to submit its proposal to provide legal services to the District in response to, and in accordance with, the Request for Proposal, Legal Services for Incline Village General Improvement District released September 24, 2018. In support thereof, Woodburn and Wedge submits the following to the District and the Selection Committee for consideration:

1. A statement of the firm's experience providing legal services to special districts and other forms of government (**Tab 1**);
2. A statement describing the firm's capacities and identifying the key personnel who will be responsible for serving the District (**Tab 2**);
3. A list of references for the three attorneys who will be primarily responsible for leading the team of attorneys that will be assigned to the District's account (**Tab 3**);
4. A spreadsheet identifying the attorneys who will likely be assigned specific tasks related to the District's legal services needs with a limited estimate of hours to perform the services (**Tab 4**); and
5. An appendix containing: (a) the resumes of the attorneys we propose to assign to the District's account; (b) a schedule of our proposed hourly rates for each attorney identified in this proposal; (c) a description of the costs we would propose to charge the District in



connection with our services; and (d) a proposed (draft) Legal Services Agreement (**Tab 5**).

Woodburn and Wedge is a general practice, full service law firm located in Reno, Nevada. We are Nevada's oldest law firm and we are celebrating our Centennial this year. We are an independent law firm meaning we are not affiliated with any regional or national out of state firm dictating how we practice law or serve our clients.

Woodburn and Wedge employs thirteen shareholder attorneys and seven associate attorneys representing 14 law schools across the United States and one foreign country (Northern Ireland). Our attorneys have a combined total of nearly 400 years of legal experience. Some of the firm's attorneys are recognized statewide and regionally as experts in water law, bankruptcy law, transportation law, employment law, tax law, corporate and business law and real property/land use law. Additionally, Woodburn and Wedge's litigators are recognized as being among the best litigators in the state capable of handling cases involving complex issues of fact and law.

Of particular interest to the District, and as detailed in our statement of experience enclosed herewith (**Tab 1**), we have represented the Walker River Irrigation District for over thirty years and we have represented the Regional Transportation Commission of Washoe County since 2010. We have also represented the Airport Authority of Washoe County and the Reno-Sparks Convention and Visitors Authority on special projects from time to time.

The proposed lead counsel, Dale Ferguson, co-lead counsel, Shawn Pearson and I would be available for an interview between **9:00 a.m. to noon** on the following dates:

Thursday	October 25, 2018
Tuesday	October 30, 2018
Thursday	November 1, 2018
Friday	November 2, 2018
Monday	November 5, 2018
Tuesday	November 6, 2018

Should you have any questions, please contact me.

Sincerely

John F. Murtha

JFM/dl
Attchs.

1



**WOODBURN AND WEDGE'S
RESPONSE TO INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL—LEGAL SERVICES**

FIRM EXPERIENCE

Woodburn and Wedge has represented the Walker River Irrigation District (“WRID”) as general counsel for over thirty years. WRID is a Nevada Irrigation District organized and operating pursuant to Chapter 539 of the Nevada Revised Statutes. It owns Bridgeport Reservoir, located in California, and Topaz Reservoir located partially in Nevada and partially in California. It also owns significant real property and other assets located in the Smith and Mason Valleys in Nevada.

Woodburn and Wedge’s representation of the WRID involves many diverse areas of law, including California and Nevada surface and ground water law, as well as federal reserved water rights law. The firm has represented the WRID for many years in complex litigation involving the waters of the Walker River in the Federal District Court of Nevada and the United States Ninth Circuit Court of Appeals. The parties to that litigation have included the United States, Nevada, California, Walker River Paiute Tribe, Mono County, California as well as Lyon and Mineral Counties in Nevada. We have also represented the WRID in numerous administrative proceedings before state agencies including hearings before the Nevada State Engineer and California Water Resources Control Board.

The Firm also provides legal advice to the WRID with respect to its day to day operations. In this regard, we have and continue to advise the WRID on issues involving water quality, employment law, deed preparation and the negotiation and drafting of lease agreements.

Woodburn and Wedge has represented the Regional Transportation Commission of Washoe County (“RTC”) as general counsel since 2010. The RTC is a Nevada Transportation Commission organized and operating pursuant to Chapter 277A of the Nevada Revised Statutes. It serves three primary roles as the Metropolitan Planning Organization, Public Transit Authority, and Street and Highway Agency for Washoe County. We advise the RTC on numerous and varied areas of State and Federal law in its mission to satisfy these three primary roles.

Woodburn and Wedge routinely provides the RTC with legal services to address issues involving environmental, real property, land use, local ordinance, fuel and sales tax, and contract law. These services are often related to the street and highway projects constructed by the RTC, including the Southeast Connector, Moana Lane, Fourth and

Prater, East McCarran and Pyramid/McCarran Projects. Woodburn and Wedge recently assisted the RTC with issues related to the planning, federal environmental clearance, utility relocation and construction necessary to initiate the Virginia Street Project.

Woodburn and Wedge also represents the RTC in Federal and State Court litigation proceedings, including personal injury matters and numerous cases involving the RTC's exercise of its power of eminent domain as necessary to acquire land to construct street and highway projects. We also advise the RTC with respect to its many interactions and interlocal agreements with other state and local governmental entities.

The Firm routinely advises both the RTC and WRID on legal issues involving the Local Government Purchasing Act (NRS Chapter 332), Public Works Law (NRS Chapter 338), Public Records Law (NRS Chapter 239), Open Meeting Law (NRS Chapter 241), Nevada Ethics in Government Law (NRS 281A) and numerous other provisions of Nevada Law that govern local government entities. These services include the preparation and review of agendas and supporting materials pursuant to the Opening Meeting Law and appearances at monthly meetings of their respective governing boards. We also routinely represent the RTC and WRID in matters related to proposed legislation introduced at the bi-annual sessions of the Nevada Legislature.

Woodburn and Wedge has assisted numerous other public entities with various legal issues over the past several decades. It provides legal advice to the Truckee Meadows Water Authority on various water resource matters. Over the years, Woodburn and Wedge has also represented the Reno-Tahoe Airport Authority, the Reno-Sparks Convention and Visitors Authority and Lander County on specific matters when its expertise is needed or when general counsel for those entities have a conflict which necessitates the engagement of special counsel.

2



WOODBURN AND WEDGE'S
RESPONSE TO INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL—LEGAL SERVICES

FIRM CAPACITIES¹

Number of Attorneys: 13 shareholder attorneys; 7 associate attorneys

Years of Experience: Our attorneys have between 1 and 46 years of experience with an average of 20 years' experience.

Bar Admissions: Of course, all of our attorneys are licensed to practice law in Nevada. Six of our attorneys are also licensed to practice law in California.

Number of Legal Assistants: 10 with between 2 and 40 years of experience with an average of 10 years' experience.

Office Location: We have one office in Reno and it is located in the NV Energy building. Our physical and mailing address is:

Sierra Plaza
6100 Neil Road
Suite 500
Reno, NV 89511

General Contact Information: Phone: (775) 688-3000
Fax: (775) 688-3088
Email: info@woodburnandwedge.com

¹ The Request for Proposal said the *Firm Capacities* statement should include a "percent-time availability providing legal advice and assistance to operating departments with regard to employee disciplinary actions." Without knowing the level of the District's needs in each area of law, it is not possible for us to designate any percent time availability for any particular attorney.

Website: www.woodburnandwedge.com

Insurance: Woodburn and Wedge maintains Lawyer's Professional Liability Insurance for \$10,000,000/\$10,000,000 underwritten by ALPS Property and Casualty Insurance Company

KEY PERSONNEL AND CONTACT INFORMATION

This chart is intended to identify only the key people who will have responsibility for serving the District.

Name	Position	Years in Practice	Bar Licenses	Direct Phone Lines	Email Addresses: @woodburnandwedge.com
John F. Murtha	Managing Shareholder	38	Nevada	688-3016	jmurtha@
Dale E. Ferguson	Shareholder	25	Nevada	688-3014	dferguson@
Shawn G. Pearson	Shareholder	21	Nevada	688-3017	spearsn@
Dane W. Anderson	Shareholder	19	Nevada California	688-3018	danderson@
Candace Kelley	Legal Assistant	19 years with the firm	N/A	688-3069	ckelley@

Availability: Proposed lead counsel, Dale Ferguson, co-lead counsel, Shawn Pearson and Managing Shareholder, John F. Murtha, would be available for an interview between **9:00 a.m. to noon** on the following dates:

Thursday	October 25, 2018
Tuesday	October 30, 2018
Thursday	November 1, 2018
Friday	November 2, 2018
Monday	November 5, 2018
Tuesday	November 6, 2018

3



WOODBURN AND WEDGE'S
RESPONSE TO INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL—LEGAL SERVICES

REFERENCES

A brief summary of the three proposed team leaders on the District's account and their references are set out below.

Dale E. Ferguson:

Direct Line: (775) 688-3014
Email: dferguson@woodburnandwedge.com

Mr. Ferguson is being designated as the primary contact for the District. Mr. Ferguson is currently lead counsel for our representation of the Regional Transportation Commission of Washoe County, and he is one of two attorneys who regularly serves the Walker River Irrigation District. He will be responsible for the Board meetings, maintaining the required office hours, accepting assignments from the District, directing assignments to the appropriate attorney(s) within the firm who are best suited to perform the services (taking the level of legal experience needed to provide an appropriate level of service to the task into consideration) and being fully familiar with all active assignments within the firm. Mr. Ferguson's references are:

Lee Gibson
Executive Director
Regional Transportation
Commission of Washoe County
1105 Terminal Way
Reno, NV 89502
(775) 527-0530

Adam Spear
Director of Legal Services
Regional Transportation
Commission of Washoe County
1105 Terminal Way
Reno, NV 89502
(775) 332-2158

Bert Bryan
Walker River Irrigation District
General Manager
410 N. Main St.
Yerington NV 89447
775-463-3523

Shawn G. Pearson:

Direct Line: (775) 688-3017
Email: spearson@woodburnandwedge.com

Mr. Pearson is being designated as Mr. Ferguson's back-up. Whenever Mr. Ferguson is not available to respond to a District inquiry, Mr. Pearson will generally be available. Mr. Pearson's areas of expertise include business law, real property law and contract law. Like Mr. Ferguson, he will be fully familiar with all active assignments within the firm. Mr. Pearson's references are:

Lance C. Watkins
Watkins Investments, LLC
P.O. Box 50116
Sparks, NV 89435
(775) 250-8326

Chad Clemetson
NevDex Properties
5310 Kietzke Ln. #205
Reno, NV 89511
(775) 829-7200

Lee Gibson
Executive Director
Regional Transportation
Commission of Washoe County
(775) 527-0530

Dane W. Anderson:

Direct Line: 775.688.3018
Email: danderson@woodburnandwedge.com

Mr. Anderson is one of our premier litigators. His role will be to serve as the liaison between the District and Woodburn and Wedge for all litigation matters. He may serve as lead counsel or he may assign some or all responsibility on a matter to another firm attorney. Regardless of whether Mr. Anderson retains responsibility for a litigation matter or assigns responsibility to another attorney, he will be fully familiar with all active litigation matters that have been assigned to the firm. Mr. Anderson's references are:

Iris Volk
1901 Rolling Brook Lane
Reno, NV 89519
(775) 240-9702

Reese Perkins, MAI, SRA
Johnson/Perkins/Griffin
245 E. Liberty Street, Suite 100
Reno, NV 89501
(775) 322-1156

Steven Crystal
2225 Market Street, Suite 101
Reno, NV 89502
(775) 742-0850

4

WOODBURN AND WEDGE

RESPONSE TO INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL—LEGAL SERVICES

*ESTIMATE OF HOURS TO COMPLETE SERVICES
REFERENCED IN REQUEST FOR PROPOSAL
AND CHART OF PERSONNEL LIKELY TO PROVIDE THE SERVICES*

ESTIMATE OF HOURS TO PERFORM SERVICES

With the exception of the “Office Hours” category, which we will place at 8 hours per month based on the information in the Request for Proposal, we are unable to estimate the hours for the services the District may need as we do not know the level of services the District needs or anticipates needing. Accordingly, all tasks will be billed at our regular hourly rates until such time as we are better able to determine the quantum of time required to meet the District’s needs. For example, once we know how long the District’s Board meetings typically last, we will be in a better position to estimate hours or provide a flat fee proposal for the Board meetings. We are, however, able to identify the attorneys to whom specific assignments will typically be given based on each of the attorney’s areas of expertise.

ATTORNEYS LIKELY TO PROVIDE THE SERVICES

	Board Meetings and Open Meeting Laws ¹	Office Hours	NRS Ch. 318 and Other Legal Issues Training	Draft, Review, Revise and Assist Staff in Execution of Contracts, Ordinances and Resolutions	Litigation- Including Necessary Legal Research and Memos	Annual Report on Litigation	Land Use, Water Rights and TRPA Issues	Research- Other Than Litigation Research	Closed Litigation Sessions	Employment Law, Including Litigation Related to Employment Issues
Dale E. Ferguson ²	X	X	X	X³			X⁴	X⁵	X	
Shawn G. Pearson ²	X	X	X	X³			X⁴	X⁵		
Dane W. Anderson ²					X⁵	X			X	
Gordon H. DePaoli							X⁴			
Gregg P. Barnard							X⁴			
Ellen J. Winograd										X
Bronagh M. Kelly					X			X		
Colton T. Loretz					X			X		

1. This includes regular and special Board meetings. Our services for Board meetings will include: (a) review of, and advice on, the agenda and supporting documentation; (b) preparation for the Board meetings; (c) consultation with General Manager and staff as needed; (d) such legal research as may be needed to address matters on the agenda; (e) attendance at the Board meetings; and (f) such other services the General Manager may request. Of course, whenever any meetings of the members of the Board members are scheduled (whether routine, special, full Board or partial Board), we will analyze issues regarding the open meeting laws.

2. Mr. Ferguson will be the lead attorney for the client.

Mr. Pearson will also perform many of the lead attorney assignments and will be Mr. Ferguson's back-up. He will serve as the liaison between the firm and the District if Mr. Ferguson is unavailable.

Mr. Anderson will be the lead litigation attorney. He may assign various litigation tasks to Ms. Kelly or Mr. Loretz. Depending on the nature of the cases, Mr. Anderson may assign an entire litigation matter to Ms. Kelly or Mr. Loretz, but he will still remain primarily responsible for all litigation matters and report to the General Manager or the Board as necessary.

3. Messrs. Ferguson and Pearson will be responsible for drafting, commenting upon and finalizing any contracts, ordinances or resolutions as determined by Mr. Ferguson at the time the assignments are received.

4. Messrs. Ferguson or DePaoli will handle all water issues, Mr. DePaoli will handle all TRPA issues and either Mr. Barnard or Mr. Pearson will handle all other land use and development issues.

5. Messrs. Ferguson or Pearson will be the point person for receiving any non-litigation research assignments and they will be responsible for forwarding them to the appropriate attorney(s). As the lead litigation attorney, Mr. Anderson will be responsible for giving legal research assignments to the appropriate firm attorneys.

<i>SUPPORT STAFF</i>	
Paralegals	<p>We do not have any certified paralegals on staff. When we have large document productions that would normally be handled by a paralegal, we have one of our secretaries from the litigation section perform the services. If the job requires more than 10 hours of time, their services may be charged at the rate of \$40 per hour.</p>
Legal Assistants	<p>Mr. Ferguson's assistant, Candace Kelley, will be responsible for: (a) maintaining a master list of all matters assigned to the firm and the attorneys responsible for the assignments; (b) scheduling all meetings of the Board, the General Manager and any staff as requested by the General Manager; (c) responding to inquiries not requiring legal analysis; and (d) generally ensuring the District's needs to contact legal counsel are met. Ms. Kelley has been with the firm since July 1999. She has assisted Mr. Ferguson in his representation of the Regional Transportation Commission of Washoe County and has experience in business and commercial matters as well as litigation support.</p> <p>Other than Ms. Kelley, the legal assistants for the attorneys whom have been assigned specific matters will be responsible for providing all necessary support services (document production, scheduling, client communications, etc.). All of our legal assistants are well qualified to assist our attorneys in their specific areas of expertise.</p>

5

WOODBURN AND WEDGE'S
RESPONSE TO INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL—LEGAL SERVICES

APPENDIX

This Appendix includes:

1. Resumes for all attorneys identified in this proposal in alphabetical order as follows:
 - Anderson, Dane W.
 - Barnard, Gregg P.
 - DePaoli, Gordon H.
 - Ferguson, Dale E.
 - Kelly, Bronagh M.
 - Loretz, Colton T.
 - Murtha, John F.
 - Pearson, Shawn P.
 - Winograd, Ellen J.

(Tab A)

2. Proposed hourly rates for all attorneys **(Tab B)**.
3. Methods for charging direct and indirect costs **(Tab C)**.
4. Proposed Legal Services Agreement **(Tab D)**.

Exhibit A

DANE W. ANDERSON



DANE W. ANDERSON

Dane W. Anderson is a shareholder and practices in all areas of commercial and general civil litigation. He has represented a wide range of business and individual clients, including local and national companies, contractors, property owners, homeowners' associations, charter schools and law firms.

Mr. Anderson has litigated, among other things, contract disputes, property disputes, tort actions, mechanic's lien issues, premises liability and cases involving misappropriation of trade secrets.

Mr. Anderson has also represented charter schools and individual clients in the area of education law. He has represented clients in both complex and simple litigation matters in the state and federal courts of Nevada and California, as well in mediation and arbitration proceedings.

AREAS OF PRACTICE

LITIGATION

Business | General Civil | Personal Injury and Torts

BAR ADMISSIONS

State Bar of Nevada (1999)
 State Bar of California (2001)
 U.S. District Court, District of Nevada
 U.S. District Court, Eastern District of California
 U.S. Court of Appeals, Ninth Circuit

EDUCATION

SANTA CLARA UNIVERSITY SCHOOL OF LAW
Juris Doctor, 1999 (class rank - top 16%)
 Emory Academic Scholarship recipient
 Honors Moot Court Board Member

UNIVERSITY OF WASHINGTON
Bachelor of Arts - Political Science, 1995

EXPERIENCE

WOODBURN AND WEDGE

RENO, NEVADA

Shareholder September 2000-present
Practices exclusively in the area of civil litigation in a broad range of matters, including contract and real estate disputes, eminent domain acquisition and relocation, premises liability, and personal injury defense matters. Has litigated numerous matters through trial, including both jury trials and bench trial, as well as mediation, arbitration and judicial settlement conferences. Conducts oversight of junior associates in management of cases. Provides counseling to clients on practical and cost-effective ways to resolve legal disputes.

HONORABLE CONNIE J. STEINHEIMER RENO, NEVADA
 SECOND JUDICIAL DISTRICT COURT Sept. 1999-August 2000
 Law Clerk

Assisted Judge Steinheimer on a wide variety of litigation matters, both civil and criminal. Reviewed numerous motions submitted to the Court and drafted memoranda and orders for the Court's review. Attended numerous jury trials, bench trials and evidentiary hearings.

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

American Bar Association
 California Lawyers Association - Litigation Section
 Washoe County Bar Association

ADDITIONAL BACKGROUND

COMMUNITY INVOLVEMENT

QUEST COUNSELING & CONSULTING

Volunteer Board Member 2012-Present
Quest is a private non-profit behavioral health agency in Reno providing counseling services to adolescents, young adults and adults who have substance abuse and mental health issues.

STATE BAR OF NEVADA

Volunteer Member
Serving as an arbitrator on the State Bar's Fee Dispute Arbitration Panel, attempting to resolve fee disputes between attorney and client to avoid formal litigation.

ROTARY NEW GENERATIONS OF RENO

Former Vice President

RENO SPARKS CHAMBER OF COMMERCE

2011 Class of Leadership Reno Sparks

GREGG P. BARNARD



GREGG P. BARNARD

Mr. Barnard has extensive experience in real estate development (commercial and residential) and issues related thereto. Mr. Barnard represented a local company in connection with financing and construction of a luxury hotel at Lake Tahoe. Mr. Barnard focuses on corporate and real property transactional work. Mr. Barnard has extensive experience in the areas of business and corporate law, mergers and acquisitions, corporate finance, structured finance, entity selection and formation, real estate law. Mr. Barnard represents a broad range of clients both nationally and internationally and regularly advises on corporate governance issues. Mr. Barnard is a member of the Nevada State Bar's Business Law Executive Committee. Mr. Barnard is recognized as a leading practitioner by Chambers USA and Best Lawyers in the categories of corporate merger and acquisitions law and real property law. Mr. Barnard is recognized as one of the Top 75 Attorneys in Northern Nevada by Nevada Business Magazine and has been recognized as a Super Lawyer in the Mountain States Super Lawyer Magazine. Mr. Barnard is a member of the Washoe County Bar Association, the State Bar of Nevada and the American Bar Association.

AREAS OF PRACTICE

Business and Commercial

- Business & Commercial Agreement
- Corporate Structure and Formation
- Merger & Acquisitions
- Partnerships & LLCs
- Real Estate Acquisition & Development
- Construction
- Secured Transactions
- Small Business

Natural Resources & Environmental

- Public and Private Land Use

Real Estate

- Acquisition
- Development
- Leasing
- Construction
- Financing
- Associations

BAR ADMISSIONS

Nevada (1991)
U.S. District Court, District of Nevada (1992)

EDUCATION

B.A., University of Nevada, Reno (1988)
J.D., Willamette University (1991)

ADDITIONAL BACKGROUND

COMMUNITY INVOLVEMENT

Juvenile Diabetes Research Foundation for Northern Nevada - Member, Board of Directors

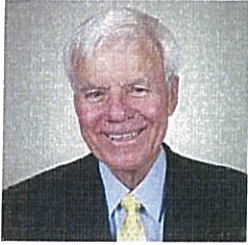
ASSOCIATIONS/MEMBERSHIPS

American Bar Association
Member - Real Property and Business Law Sections
Washoe County Bar Association

PUBLICATIONS

Co-Author *Study of Nevada Corporation Law, 1990*
The 2011 Nevada Legislative Session
Summary of Select Statutory Changes Related to Nevada Business Entities and Real Property, Northern Nevada Business Weekly, October 2011
So You're Thinking of Selling Your Business...
Northern Nevada Business Weekly, June 2012

GORDON H. DEPAOLI



GORDON H. DePAOLI

Gordon H. DePaoli has broad civil practice experience, including real estate transactions, and personal injury, eminent domain and business tort litigation in state and federal trial courts and the Nevada Supreme Court. Clients in those cases included IBM, AT&T and Rockwell International. He also has been active in land use issues and litigation at Lake Tahoe. His experience includes numerous appearances before the Nevada Legislature concerning the Tahoe Regional Planning Agency Compact and before committees of the United States Congress concerning the Santini-Burton Act. Related litigation took place in the United States District Court for the District of Nevada and Eastern District of California and in the United States Court of Appeals

for the Ninth Circuit. Clients included Edgewood Companies, formerly Park Cattle Co., Harveys Wagon Wheel, Inc. North Shore Tahoe Properties, and the Lake Tahoe Gaming Alliance.

AREAS OF PRACTICE

Business and

Commercial Business and Commercial Agreements | Real Estate

Litigation Business | General Civil | Natural Resources

Natural Resources & Environmental Administrative Law | Environmental Law & Litigation | Alternative Energies | Public & Private Land Use | Water Law

Real Estate Development | Commercial Landlord/Tenant Relationships

BAR ADMISSIONS

State Bar of Nevada (1972)
U.S. Supreme Court (1983)
U.S. Court of Appeals, Ninth Circuit (1977)
U.S. District Court, District of Nevada (1975)

EDUCATION

Juris Doctor, University of Colorado, 1972
Associate Editor, University of Colorado Law Review
Order of the Coif
Bachelor of Arts, University of Nevada, Reno 1969
High Distinction, Phi Kappa Phi

HONORS & AWARDS

Mr. DePaoli has attained an AV rating through the Martindale Hubbell ratings system, has been included in America's Leading Lawyers for Environment in the Chambers USA Client Guide, and has been selected for inclusion in the "Best Lawyers in America" and in the "Mountain State Super Lawyers" publication.

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

State Bar of Nevada
Washoe County Bar Association

ADDITIONAL BACKGROUND

Mr. DePaoli has extensive experience in all facets of water law. That experience includes appearances before the Nevada State Engineer, California State Water Resources Control Board, committees of the Nevada Legislature, and state and federal trial and appellate courts. He has represented Sierra Pacific Power Company and the Truckee Meadows Water Authority in long-standing water rights disputes on the Truckee River. He was involved in negotiations leading up to the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, Public Law No. 101-618, and in the negotiations and litigation which resulted in the implementation of that Act. He represents the Walker River Irrigation District, which representations has involved him in various matters before the federal court in Nevada, and California state courts and administrative agencies.

Mr. DePaoli is a past member of the editorial board of the Western Water Law and Policy Reporter. He has chaired the annual conference on Nevada Water Law on several occasions. He served as a member of the Ninth Circuit Advisory Committee on Rules of Practice and Internal Operating Procedures. He was President of the Washoe County Bar Association from July 1, 1990 through June 30, 1991. For many years, he served on the Board of Trustees of Volunteer Lawyers of Washoe County, a non-profit corporation which provided pro-bono legal services in Washoe County. He served as Chairman of the Nevada Standing Committee on Judicial Ethics and Election Practices from 2005 to 2008.

DALE E. FERGUSON



DALE E. FERGUSON, ESQ.

Dale E. Ferguson, Esq. practices primarily in the areas of real property and public entity law. He represents public agencies as well as private individuals and entities in litigation and contractual issues related to real property. Mr. Ferguson has extensive real property experience in the areas of eminent domain, land use, natural resources and environmental law, including water law. Mr. Ferguson also provides day-to-day advice to public agency clients on routine issues involving, among others, Nevada's Opening Meeting law (NRS Chapter 241), Nevada's Public Records Statute (NRS Chapter 239), the Local Government Purchasing Act (NRS Chapter 332), Public Works Projects (NRS Chapter 338) and the Nevada Ethics in Government law (NRS Chapter 281A).

AREAS OF PRACTICE

Business

Commercial Real Estate

Natural Resources & Environmental

Administrative Law
Environmental Law
Environmental Litigation
Public and Private Land Use
Water Law

Real Estate

Landlord / Tenant Relationships

BAR ADMISSIONS

State Bar of Nevada (1993)
U.S. District Court, District of Nevada
U.S. Court of Appeals, Ninth Circuit

EDUCATION

Bachelor of Science, University of Nevada, 1989
Juris Doctor, University of Utah, 1993

HONORS & AWARDS

Mr. Ferguson has attained an AV rating through the Martindale Hubbell Rating System

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

American Bar Association
State Bar of Nevada
Washoe County Bar Association

ADDITIONAL BACKGROUND

Mr. Ferguson acts as Chief Counsel to the Regional Transportation Commission of Washoe County. In that capacity, he reviews RTC Agendas and Agenda Items and attends meetings of the RTC Board. He reviews RTC contracts and researches relevant areas of law as necessary. Mr. Ferguson assists the RTC with preparation of procurement documents, related contracts and any bid protests. Mr. Ferguson researches and opines on relevant areas of public entity law as requested, including but not limited to, legal questions arising under NRS Chapters 37, 239, 241, 277, 277A, 281A, 332, 338, 340, 341, 373, and 377A. Mr. Ferguson researches and opines as requested on real property, environmental, land use, local ordinance and other issues of law as requested by the Board, the Executive Director, or the Director of Legal Services. He advises the RTC on draft legislation, proposed revisions to draft legislation and on appearances before the Nevada Legislature and other public bodies. Mr. Ferguson also provides legal services to the RTC on numerous other legal issues, including litigation matters involving the RTC.

BRONAGH M. KELLY



BRONAGH M. KELLY

Bronagh M. Kelly is a native of Ireland who has been practicing law in the United States since 2012. With experience across multiple legal disciplines, Ms. Kelly brings a unique perspective to the practice of law. While a substantial portion of her practice is devoted to the area of family law, she also practices in all areas of commercial and civil litigation.

Bronagh graduated from Queen’s University of Belfast in Ireland, with a Bachelor of Laws in Common and Civil Law with Hispanic Studies. She spent her third year of university at the University of Salamanca, Spain, studying Spanish Law and the Spanish language, as well as other European languages.

After graduation, Bronagh passed the New York Bar Exam in 2011 and began practicing law at a nationally renowned firm focusing on commercial defense litigation in New York City. She gained extensive litigation experience and handled complex commercial liability cases from inception through resolution, which included motion practice, court appearances and client contact. Bronagh’s clients included an international furniture manufacturer, two of the world’s largest hotel chains, international clothing retailers, an international non-profit conservation society, car rental companies, and some of the nation’s largest insurance companies. Many of the cases were valued in excess of \$10 million.

After marrying a fifth generation Nevadan in 2016, Bronagh relocated to Reno and joined Woodburn and Wedge. The transition from commercial defense litigation to family law is exciting and extremely rewarding. Bronagh has found a new passion in this area of law. Her litigation experience enhances her ability to work efficiently with each client to reach the best outcome. If a fair settlement cannot be reached, she can effectively and diligently engage in motion practice and trial to pursue her client’s best interests.

Outside the office, Bronagh enjoys skiing and kayaking at Lake Tahoe, traveling to new places, and getting home to Ireland to visit family as often as possible.

AREAS OF PRACTICE

Family Law & Domestic Relations

- Family Mediation
- Child Custody
- General Family Practice
- Preuptial Agreements

Litigation

- Commercial
- General Civil

BAR ADMISSIONS

- New York (2011)
- U.S. District Court, Eastern District of New York (2016)
- U.S. District Court, Southern District of New York (2016)
- Nevada (2017)
- U.S. District Court, District of Nevada (2017)
- Work Authorization for: United States | United Kingdom | European Union

EDUCATION

Queen’s University of Belfast

LL.B. (Bachelor of Laws)
Common and Civil Law with Hispanic Studies July 2010

Universidad de Salamanca - Salamanca, Spain

Erasmus Study Abroad 2008-2009

EXPERIENCE

Woodburn and Wedge Reno, Nevada
Associate Attorney
Jan. 2017-Present

Marshall Dennehey Warner Coleman & Goggin New York, New York
Associate Attorney
June 2014-Aug. 2016

Jones Hirsch Connors Miller & Bull New York, New York
(merged with Marshall Dennehey in 2014)
Associate Attorney
June 2012-June 2014

Morris County Prosecutor’s Office Morristown, New Jersey
Legal Intern
June 2008-Aug. 2008

ADDITIONAL BACKGROUND

COMMUNITY INVOLVEMENT

- Performed extensive work with suicide prevention charity, *Lighthouse*
- Ronald McDonald House Charities Volunteer
- Lawyer in the Library Volunteer

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

- American Bar Association
- New York Bar Association
- Northern Nevada Women Lawyers Association
- Washoe County Bar Association

HONORS & AWARDS

- Upper Second Class Honors, First Division (2:1) - Queen’s University
- Ranked 1st in class in Law with Hispanic Studies - Queen’s University
- Ranked top 5% of law school
- Queen’s Law Society - Member
- Student-Staff Consultative Committee - Elected Member
- Queen’s University Law School, Equity Prize, 1st in Year (2010)
- Queen’s University Law School, European Substantive Law Prize, 1st in Year (2010)
- The School of Languages and Literature at Queen’s University, Distinction in Spoken Spanish (2010)

Rose of Tralee International Festival - Antrim Rose (2011-2012)

- Sole candidate chosen to represent County Antrim at official engagements
- Met national and local government officials to promote Irish diaspora

COLTON T. LORETZ



COLTON T. LORETZ

Colton T. Loretz is an associate attorney practicing primarily in the areas of commercial landlord tenant relationships, real estate, transportation law, business litigation, and civil litigation. Before being admitted to the State Bar of Nevada, Mr. Loretz was an extern for both the Honorable Judge Jennifer P. Togliatti in the Eighth Judicial District Court and the Honorable Judge James C. Mahan in the United States District Court for the District of Nevada.

AREAS OF PRACTICE

Litigation

General Civil Litigation
Business Litigation
Trust Litigation

Real Property

Landlord/Tenant Relationships
Real Estate Disputes

Transportation Law

Regulatory Issues
Interstate Transport

BAR ADMISSIONS

- Nevada (2017)
- U.S. District Court, District of Nevada (2017)
- U.S. Court of Appeals, Ninth Circuit (2017)

EDUCATION

Juris Doctor, William S. Boyd School of Law (2017)
Juris Doctor Candidate, Seattle U School of Law (2015)
B.A., Criminal Justice, University of Nevada, Reno (2014)

EXPERIENCE

Woodburn and Wedge
Associate Attorney Sept. 2017-Present
Summer Associate May-Aug. 2016

U.S. District Court, District of Nevada
Legal Extern to Hon. James C. Mahan Jan.-April 2016

**Nevada Restaurant Services, Inc.
dba Doty's & UI Gaming**
Law Clerk to In-House Counsel Sept.-Nov. 2015

Washoe County District Attorney's Office
Legal Extern, Appellate Division June-Aug. 2015

Washoe County Public Defender's Office
Intern to Deputy Public Defender Jan.-May 2014

ADDITIONAL BACKGROUND

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

- Young Lawyers Section (YLS), Nevada State Bar
 - *YLS Grants Chairperson* (2018-19)
 - *YLS Health and Wellness Chairperson* (2018-19)
- Washoe County Bar Association
- Young Professionals Network
- Young Professionals Committee, Big Brothers Big Sisters of Northern Nevada
- Association of Motivated Professionals

COMMUNITY INVOLVEMENT

- Big Brothers Big Sisters of Northern Nevada, *Big Brother* (Aug. 2018-present)
- Nevada State and Regional High School Mock Trial Competitions, *Volunteer Judge* (2017-18)
- Keep Truckee Meadows Beautiful "Great Community Cleanup", *Volunteer* (2018)
- 360 Blueprint, *Read-to-Succeed Mentor* (2014)
- ESL In-Home of N. Nevada, *English Tutor* (2014)

HONORS & AWARDS

- 1st Place, Writing Competition: *Solar-Hydrogen Future* (2010)
- Edith Merit Scholarship (University of Nevada, Reno)
- Millennium Scholarship (2010-14)
- Outstanding Judicial Opinion Award (University of Nevada, Reno)
- Trustee Law Scholarship (Seattle University School of Law) (2014-15)

LAW REVIEW

Nevada Law Journal, William S. Boyd School of Law

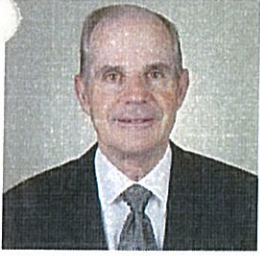
- *Articles Editor* (2016-17)
- *Junior Staff Member* (2015-16)

PUBLICATIONS

The War of Personhood: Nevada's Personhood Initiative, THE MONTAG, VOL. II, C. OF LIBERAL ARTS J. OF UNDERGRAD. RES., 130-144 (March 2013)

JOHN F. MURTHA

JOHN F. MURTHA



John F. Murtha is the managing shareholder at Woodburn and Wedge whose practice focuses primarily in the areas of commercial law, commercial litigation with an emphasis on bankruptcy law and real property law. Mr. Murtha's time is generally spent as follows: 60% on bankruptcy matters (almost exclusively representing creditors and trustees and, on occasion, serving as a Chapter 11 Trustee); 10% on general commercial law; 10% on general civil matters, i.e., real estate sales and leases, contracts, corporate matters, simple wills, etc.; and 20% managing Woodburn and Wedge. Mr. Murtha's clients include public agencies, national banks, financial institutions, law firms, accounting firms, engineering firms, utility companies, bankruptcy trustees and state court receivers.

AREAS OF PRACTICE

<i>Bankruptcy</i>	Business Consumer
<i>Business and Commercial</i>	Agreements
<i>Litigation</i>	Bankruptcy Litigation Business General Civil
<i>Real Estate</i>	Commercial Landlord/Tenant Relationships

BAR ADMISSIONS

State Bar of Nevada (1980)
U.S. Bankruptcy Court, District of Nevada (1980)
U.S. District Court, District of Nevada (1980)

EDUCATION

Juris Doctor - Magna Cum Laude (1980)

- University of Illinois, College of Law
- Member of the Order of the Coif (awarded to those in top 10% of class)
- Recipient of the 1980 Rickert Award for Excellence in Legal Writing
- Member - University of Illinois Law Forum (1978-1980)
- Administrative Editor - University of Illinois Law Forum (1979-1980)

Bachelor of Arts, Political Science - Summa Cum Laude (1976)
Winona State University, Minnesota

PROFESSIONAL EXPERIENCE

Woodburn and Wedge - Reno, Nevada (1980-present)

- Associate Attorney (1980-1986)
- Shareholder Attorney (1987-present)
- President of the Firm (2000-present)

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

- American Bar Association
- Phi Delta Phi* | The International Legal Honor Society
- Washoe County Bar Association

ADDITIONAL BACKGROUND

COMMUNITY INVOLVEMENT

- Rotary Club of Reno-Central - Member (1984-present) | former President (1987-1988)
- Leadership Reno Program (Chamber of Commerce) - Participant
- Washoe County School District Sex Education Advisory Committee - Chairman (1987-2000)
- South Reno United Methodist Church - President/Chairman of the Board of Trustees (1990-2012)
- Saint Mary's Regional Medical Center's Institutional Review Board - Member (2003-2008)

HONORS & AWARDS

- Lawyer Representative to 9th Circuit Judicial Conference (2006-2009)
- Member of the Bankruptcy Rules Subcommittee for the U.S. Bankruptcy Court, District of Nevada
- Rated AV (highest rating available) by Martindale-Hubbell (20+ years)
- Named in *Best Lawyers of America* (since 1996)
- Named in *Mountain States Super Lawyers*

MILITARY SERVICE

United States Air Force - Missile Electronics Equipment Technician
September 1969 to August 1973 | Highest Rank Attained-Sergeant
****Honorably Discharged****



REPRESENTATIVE MATTERS

- Represented Reno Sparks Conventions and Visitors Authority ("RSCVA") in connection with its transfer of the National Bowling Stadium (located in Reno, Nevada) from RSCVA to the City of Reno. The public decision making process took close to four months to complete and involved numerous open meetings of the RSCVA Board and culminated in a joint open meeting of the RSCVA Board, the Reno City Council and the Washoe County Board of Commissioners. Responsible for preparing the agendas, motions and resolutions, and reviewing final transfer documents on behalf of RSCVA.
- Served as Chapter 11 Trustee for the Sage Ranch residential subdivision located in Fernley, Nevada. When appointed Trustee, the project was in full production: 81 homes had been built and sold, approximately another 12 were pre-sold and under construction, and the remaining homes were pre-sold but construction had not commenced. Oversaw completion of the 12 or so homes that were under construction, and caused construction on another ten homes to be started and completed. The remainder of the project was sold in bulk.
- Co-defended Canadian law firm against malpractice claim in which plaintiffs demands ranged, at various times, between \$3,000,000 and \$50,000,000. The court ruled in favor of the plaintiff, but the damage award was less than \$200,000.
- Represented a Chapter 11 Trustee for an adult entertainment business located in Las Vegas, Nevada. The business was purchased for \$6,500,000 and sold two years later for over \$23,000,000. The large windfall caused substantial disputes among the debtor's partners and a Chapter 11 proceeding was commenced to preserve the profits for creditors. Advised the Trustee on liquidation of the estate, payments to creditors and resolution of multiple disputes among equity holders regarding division of the windfall profits.
- Represented Reno Tahoe Airport Authority in the bankruptcy proceedings of United Airlines, Delta Airlines, TWA, Aloha Airlines, Northwest Airlines and American Airlines.
- Representing Trustee in a large mortgage company bankruptcy appearing to have in excess of 400 investors potentially defrauded in the range of \$40,000,000-\$65,000,000.

SHAWN G. PEARSON

SHAWN G. PEARSON



Shawn Pearson is a shareholder whose practice focuses primarily on corporate law, real property law, and other commercial transactions. He has represented a range of clients, from startup small business owners to Fortune 500 corporations.

AREAS OF PRACTICE

Mr. Pearson focuses on business and transactional work. His practice is split between assisting local entrepreneurs to achieve their business goals, and working with regional and national enterprises to accomplish their objectives in Nevada. Mr. Pearson has worked with a national wireless phone provider in acquiring real property to build its tower network and open its retail centers. Mr. Pearson frequently negotiates contracts on behalf of his clients, from mergers and other business acquisitions to real estate purchase agreements and commercial leases. Mr. Pearson has extensive experience working with clients, adverse parties and other lawyers to achieve reasonable, common sense results where all parties get a fair deal and the risk of future litigation is minimized.

Business and Commercial

Business and Commercial Agreements | Corporate Structure and Formation | Mergers & Acquisitions | Partnerships/LLCs
 Real Estate | Secured Transactions | Small Business

Real Estate

Commercial Landlord/Tenant Relationships | Homeowners' Associations

Representative Matters

- Represented regional licensee of nationally recognized wireless telephone provider in negotiating over 30 commercial leases. In every case, material concessions were obtained from the landlord.
- Frequently represents public and private enterprises in Nevada components of secured financing transactions and provision of Nevada legal opinions.
- Represented local business owner in acquisition of regional competitor. Successfully oversaw the transaction and supervised the work of out-of-state attorneys to achieve client's objectives in Nevada and adjoining states.
- Represented publicly traded Nevada corporation in merger transaction. Advised the corporation's board of directors on its fiduciary duties and assisted the corporation in negotiating and drafting the merger agreement, while at the same time engaging and efficiently delegating securities and non-Nevada work to outside counsel.
- Represented local business owner in the acquisition of his partner's interest in the business. Assisted business owner in acquiring his partner's interest on favorable economic terms while minimizing risk of past liabilities.
- Negotiated commercial lease on behalf of local business owner. Because of terms which were negotiated into the lease, client was later able to terminate the lease after landlord's default without long-term liability.

BAR ADMISSIONS

State Bar of Nevada (1997)
 U.S. District Court, District of Nevada (1997)

EDUCATION

Bachelor of Arts in Political Science *with distinction* -
 University of Nevada, Reno (1993)
Juris Doctor - University of Utah (1997)

ADDITIONAL BACKGROUND

COMMUNITY INVOLVEMENT

- State Bar of Nevada Real Property Section, Executive Committee (current)
- Reno Bicycle Project, Board of Directors (2009-2014)
- State Bar of Nevada Young Lawyers Section, Chair (2003-2004)
- Reno Wheelmen, Board of Directors (2006-2009)

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

American Bar Association
 Washoe County Bar Association

PUBLICATIONS/PRESENTATIONS

Mr. Pearson presents frequently on issues relating to real property and commercial leasing, including *Foreclosures, Deeds in Lieu, Short Sales, and Foreclosure Alternatives in Nevada*, which was presented to the State Bar of Nevada's Family Law Section's Annual Meeting in 2011. Other publications and presentations include:

- "Tenants' 2012 Retail Leasing Issues" - *Northern Nevada Business Weekly*, Business Law Guide - 2012
- "Where to Turn" - *Northern Nevada Business Weekly* - February 13, 2012
- "The Risks in Buying a Delinquent Mortgage" - *Northern Nevada Business Weekly* - April 8, 2011
- "Hype or Hypertext? A Plan for the Law Review to Move into the Twenty-First Century" - 1997 Utah L.Rev. 765

HONORS AND AWARDS

"AV" rated, Martindale-Hubbell

ELLEN JEAN WINOGRAD

ELLEN JEAN WINOGRAD



Ellen Jean Winograd is a shareholder and practices primarily in the areas of employment law, transportation (litigation and regulatory) and commercial litigation. Her employment practice includes acting in the capacity of general counsel for an 11-state association that is involved at all levels of H-2A guest worker employment, including administrative law, class action litigation and general advisory work. Having appeared in state and federal trial and appellate courts within California, Nevada and Colorado, Ms. Winograd has litigated transportation and employment matters at all levels as well as throughout the course of alternative dispute resolution and administrative proceedings. Ms. Winograd believes a proactive approach to employment practice begins with hiring practices, proceeds through employment procedures and training, and incorporates preventive intervention whenever possible.

AREAS OF PRACTICE

Business/Commercial

General | Litigation

Employment

Employer/Employee Relations | Litigation | Policies and Procedures

Litigation

Business | Commercial

Transportation

Litigation | Regulatory

BAR ADMISSIONS

California (1983)

Nevada (1984)

U.S. District Court, District of Nevada (1984)

U.S. Court of Appeals, Ninth Circuit (1985)

U.S. District Court, Eastern District of California (1992)

U.S. District Court, Central District of California (1992)

U.S. District Court, Northern District of California (2003)

U.S. District Court, District of Colorado (2015)

U.S. Court of Appeals, Tenth Circuit (2018)

EDUCATION

B.A., Stanford University (1980)

- including two semesters enrolled in Vienna, Austria

J.D., University of California - Hastings College of Law (1983)

ADDITIONAL BACKGROUND

COMMUNITY INVOLVEMENT

MS. WINOGRAD HAS SERVED ON SEVERAL NON-PROFIT BOARDS, INCLUDING CHAIRMAN OF THE BOARD OF DIRECTORS FOR ARTOWN, NORTHERN NEVADA'S PREMIER ARTS ORGANIZATION.

Cazadero Performing Arts Camp, Board of Trustees (2010-present)

Artown, Board of Directors (2005-2010); Chair (2008-2009)

Congregation Temple Sinai, Board of Trustees (2005-2008)

North Lake Tahoe Symphony Association, Board of Directors (1993-1997)

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

American Association of University Women

American Bar Association

Association of Transportation Practitioners

Beverly Hills Bar Association

State Bar of California

State Bar of Nevada

Transportation Lawyers Association

Washoe County Bar Association

PUBLISHED DECISIONS

Moore v. Landmark Hotel Casino, 757 P.2d 361 (Nev. 1988)

Bradshaw v. Golden Road, Inc., 885 F.Supp. 1370 (D.Nev. 1995)

Drucker v. O'Brien's Moving and Storage, 745 F.Supp. 616 (D.Nev. 1990)

Estate of Young v. Larry Holmes, 134 F.R.D. 291 (D.Nev. 1991)

Drucker v. O'Brien's Moving and Storage, 963 F.2d 1171 (9th Cir. 1992)

Ray v. Continental Western Ins. Co., 920 F.Supp. 1094 (D.Nev. 1996)

Bade v. Courtesy Oldsmobile, Inc., 2006 WL 679900 (9th Cir. 2006), cert. den.127 S.Ct. 496 (2006)

Hays Home Delivery v. Employers' Insurance Company of Nevada, 31 P.3d 367 (Nev. 2001)

U.S. E.E.O.C. v. Lakemont Homes Inc., 718 F.Supp.2d 1251 (2010)

Ryan's Express, Inc. v. Amador Stage Lines, 279 P.3d. 166 (Nev. 2012)

Green v. Robinson Nevada Min. Co., 2014 WL 880903 (D.Nev. 2014)

Castillo v. Western Range Association, 2017 WL 1364584

Castillo v. Western Range Association, 2018 WL 893862

PRESENTATIONS

As We Approach the Holiday Season, speaker - Northern Nevada Human Resources Association (Carson City, NV)

Claims Manuals for Household Goods Carriers, speaker - Transportation Lawyers Association, Regional Meeting (San Francisco, CA)

Keynote Speaker - American Red Ball Movers, Annual Meeting (Scottsdale, AZ)

Liability Nightmares Music Teachers Never Thought of, But Should Have..., speaker - Nevada Music Educators' Association, Annual Meeting (Carson City, NV-2005)

Pregnancy & Maternity Leave: Balancing Family and Work

Panel Presentation - State Bar of Nevada 2nd Annual Women in the Law Conference (June 2014)

Transgender Identity Protection Under Recent California Legislation, speaker - CDHK Employment Symposium (Reno, NV)

Wage and Hour Litigation Panel, moderator - CDHK Employment Symposium (Reno, NV)

PUBLICATIONS

Happy Holidays: A Joyous Time for Employees or a Litigation Trap for Employers? Northern Nevada Business Law Guide (September 2011)

Medical Marijuana - Northern Nevada Business Weekly (October 2012)

Protected Employee Classification "Gender Identity or Expression". Are Employers in Compliance? - Northern Nevada Business Law Weekly (November 2013)

Things to Consider for Company-Paid Moves - Northern Nevada Business Weekly (June 2013)

Exhibit B

**WOODBURN AND WEDGE'S
RESPONSE TO INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT'S
REQUEST FOR PROPOSAL—LEGAL SERVICES**

PROPOSED HOURLY RATES

The hourly rates are for those attorneys who are likely to provide services to the District, but do not include all of our attorneys' hourly rates. Typically associate attorneys will be billed at between \$200 and \$275 per hour and shareholder attorneys will be billed at \$335 per hour.

Name	Position	Years in Practice	Areas of Responsibility	Hourly Rate
Dale E. Ferguson	Shareholder	25	As part of this proposal we are submitting a chart identifying attorneys likely to be assigned to District matters. These are the attorneys identified in the chart. Their roles in providing services to the District are highlighted in that chart.	\$335
Shawn G. Pearson	Shareholder	21		\$335
Dane W. Anderson	Shareholder	19		\$335
Gordon H. DePaoli	Shareholder	46		\$335
Gregg P. Barnard	Shareholder	27		\$335
Ellen J. Winograd	Shareholder	35		\$335
Bronagh M. Kelly	Associate	5 in NY and 2 in Nevada		\$225
Colton T. Loretz	Associate	1		\$200

Exhibit C

WOODBURN AND WEDGE'S
RESPONSE TO INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT'S

REQUEST FOR PROPOSAL—LEGAL SERVICES

***METHODS FOR CHARGING DIRECT AND
INDIRECT COSTS***

1. Bills for legal services and costs will be sent monthly. Payment is expected within 30 days of delivery.
2. The actual costs charged to us by third party vendors (copy services, court reporters, court fees, etc.) shall be charged to the District without a mark-up or premium.
3. Any non-litigation cost less than \$1,000 shall be advanced by the firm and included as a reimbursable cost on the next bill to the District.
4. For any non-litigation costs anticipated to be more than \$1,000, we would get approval from the District in advance of incurring the cost and we would request that the District pay the cost directly rather than having the firm advance said costs.
5. For costs in litigation matters anticipated to be more than \$2,000 per item, we would get approval from the District in advance of incurring the cost. All litigation costs would be advanced by the firm and included as a reimbursable cost on the next bill to the District.
6. Electronic legal research (we use Westlaw) will be billed at 75% of the amount charged to us.
7. There will be no travel costs associated with any trips between Reno and Incline Village. Otherwise, all automobile travel will be charged at the rate of \$.55 per mile.
8. All air travel will be billed at the cost for a coach class seat. If the traveler books a premium seat (business class or first class) he/she shall pay the cost over and above the cost of a coach class seat.

9. Lodging will be billed at any time an attorney is more than 100 miles from Reno at the end of the business day (5:30 p.m.).
10. Meals are charged only if the attorney or staff person is traveling outside the Reno, Sparks or North Lake Tahoe area. Meal charges will not include alcoholic beverages.
11. In-house photocopies will be billed at the rate of \$.20 per page. Any copy job anticipated to total more than 500 pages will be sent to a third party vendor, if time permits.
12. There is no charge for phone calls or faxes.
13. Staff overtime will only be billed if it is necessary to meet a litigation deadline or other deadline imposed by the District. Overtime will be billed at 1.5 times the staff person's normal hourly rate.

Exhibit D

LEGAL SERVICES AGREEMENT

This Legal Services Agreement (the "Agreement") is dated and effective as of _____, 2018, by and between the Incline Village General Improvement District, a quasi-public agency established by Washoe County, Nevada, under the provisions of Nevada Revised Statutes, Chapter 318 ("IVGID") acting by and through its duly authorized officers, and Woodburn and Wedge, a Nevada professional corporation ("Firm").

RECITALS

WHEREAS, IVGID is chartered to provide water, sewer, trash and recreational services for the communities of Incline Village and Crystal Bay, Nevada; and

WHEREAS, IVGID sometimes needs the assistance of legal counsel to perform its duties under its charter and Nevada Revised Statutes, Chapter 318; and

WHEREAS, on September 24, 2018, IVGID released a "Request for Proposal—Legal Services for Incline Village General Improvement District" ("RFP") in search of a lawyer or law firm qualified to meet IVGID's legal needs; and

WHEREAS, the Firm submitted a proposal to IVGID in response to, and in accordance with, the RFP ("Proposal"); and

WHEREAS, the Firm's Proposal was accepted by IVGID; and

WHEREAS, based on the information contained in the Firm's Proposal, IVGID desires to hire the Firm to perform general and specialized legal services as required by IVGID and the Firm wishes to provide those services to IVGID.

NOW, THEREFORE, IVGID and the Firm, in consideration of the mutual covenants contained herein and other good and other valuable consideration, do agree as follows:

COVENANTS AND AGREEMENTS

A. SERVICES

1. Scope of Services. During the term of this Agreement, the Firm agrees to provide the following legal services to IVGID upon its request:

a. *Board Meetings.* All references to the "Board" shall mean and refer to the duly elected members of IVGID's Board of Trustees collectively and legally assembled for the purpose of conducting IVGID's business. The firm will have a representative at all of IVGID's Board meetings, whether they be regularly scheduled or special meetings. In connection with each Board meeting, the Firm will: (i) review the agenda and supporting documentation and give IVGID's General Manager ("General Manager") advice on the agenda and the meeting; (ii) analyze any issues regarding the open meeting laws as applied to the meeting and advise the General Manager of any special concerns or issues; (iii) prepare, as necessary, for the Board meeting; (iv) consult with General Manager and staff as needed; (v) conduct such legal research as may be necessary to address matters on the agenda; and (vi) provide such other legal services as the General Manager may request.

b. *Guidance and Training.* The Firm will provide training to the General Manager and staff, as requested, on Nevada Revised Statutes, Chapter 318 and

on such legal issues as may arise from time to time as directed by the General Manager or the Board.

c. *Office Hours.* The Firm will cause one or more of its attorneys to maintain office hours at IVGID's administrative offices in Incline Village, Nevada, as requested by IVGID to meet its operational needs. The frequency and duration of the office hours shall be subject to negotiation and agreement between the Firm and the General Manager.

d. *Documents.* The Firm will draft, review and revise, or provide assistance to the General Manager or his staff in drafting, reviewing and revising, such ordinances, legal memos, contracts, leases and such other documents as may be requested by the General Manager or the Board.

e. *Litigation.* The Firm will be responsible for managing any litigation matters assigned to it by the General Manager or the Board. The Firm, depending on the nature of the litigation at issue, may either assume direct and complete responsibility for an assigned litigation matter or, on advice to the General Manager and with his consent, it may assign the matter to another lawyer or law firm that may have special expertise in the legal issues presented by a particular case. It is IVGID's preference that the Firm retain direct responsibility for any litigation matter provided the Firm has the personnel on staff with the necessary experience to handle the matter. In each instance in which the Firm assigns a litigation matter to another lawyer or law firm, the Firm will be responsible for monitoring the litigation such that it and the General Manager are fully aware of the

status of any assigned litigation matters at all times. In connection with all pending litigation matters, whether retained by the firm or assigned to outside counsel, the Firm will provide IVGID with a report on the status of all cases no less often than annually and will conduct such closed door litigation sessions with members of the Board, the General Manager and staff from time to time as needed and as are in compliance with Nevada's open meeting laws.

f. *Research.* The Firm will research special IVGID matters or other legal matters as may be directed from time to time by the Board or the General Manager.

g. *Staff Assistance.* The Firm will assist staff members as requested by the General Manager from time to time with executing transactions consistent with IVGID's policies, practices and procedures.

h. *Other Representation.* The Firm will perform such other legal services as may be assigned to it from time to time by the Board or the General Manager.

i. *Areas of Law.* The Firm has attorneys qualified to provide IVGID with legal services related to: (i) IVGID's role as a quasi-public agency; (ii) Nevada's open meeting laws; (iii) land use and real property development issues; (iv) water and environmental issues; (v) issues related to the Tahoe Regional Planning Agency; (vi) employment law; and (vii) a variety of other areas of law for which IVGID may need assistance from time to time. Also, the Firm has multiple attorneys licensed in Nevada and California who are qualified and experienced to provide litigation services to IVGID from the simplest to the most complex cases that may arise. The Firm will be able to

assign IVGID's matters in the areas of law referenced above to attorneys who are well qualified in their particular areas of expertise.

2. Personnel Assignments. Whenever possible, the firm will have either Dale E. Ferguson or Shawn G. Pearson prepare for, consult on and attend all Board meetings as requested by IVGID. Messrs. Ferguson and Pearson shall be the lead and co-lead counsel on the IVGID account and will be responsible for being fully aware of the status of all active and pending IVGID matters assigned to the Firm. Notwithstanding the foregoing, the Firm reserves the right to assign IVGID matters to the most appropriate attorney(s) within the Firm for any particular matter based upon considerations of: (a) the area of law involved; (b) the nature of the issue; (c) the level of experience needed to provide high quality and efficient services to IVGID; and (d) IVGID's needs. This means, from time to time, an attorney other than Messrs. Ferguson or Pearson may be responsible for a particular Board meeting. Whenever possible, the Firm will give the General Manager advanced notice when someone other than Messrs. Ferguson or Pearson will be responsible for a particular Board meeting. Notwithstanding the Firm's right to assign IVGID matters to the most appropriate attorney(s) for the task, in its Proposal the Firm provided IVGID with a list of personnel most likely to provide services to IVGID and their respective areas of expertise. To the extent possible the Firm will only assign IVGID matters to the attorneys identified in its Proposal.

3. IVGID's Responsibilities. IVGID shall provide the Firm with: (a) proposed agendas and all related documents for any Board meetings, retreats, workshops

or hearings; (b) annual operating and capital budgets, as adopted; (c) comprehensive annual financial reports; (d) access to its archive of documents; (e) access to members of its senior management team as needed for any particular assignment; and (f) such other information, historical or current, as the Firm may reasonably need in the performance of its services.

4. Non-Exclusive Agreement. Nothing contained herein shall be construed as establishing an exclusive right for the Firm to provide all of IVGID's legal services. The parties agree that IVGID may, in its sole discretion, contract with other lawyers or law firms to perform legal services on behalf of IVGID.

5. Review. The Board may elect to review the Firm's services at any time, including before any exercise of IVGID's options to renew this Agreement. The Board's review of the Firm's services may take into account: (a) the Firm's performance under this Agreement; (b) the Firm's adherence to IVGID's schedules, when applicable; (c) the Firm's ability to complete projects within budget, when applicable; and (d) any other measures of the Firm's performance the Board, at its discretion, deems relevant.

B. TERM

1. Initial Term. The term of this Agreement shall be from _____, 2018, and shall continue through _____, unless sooner terminated as provided in this Agreement.

2. Options to Renew. IVGID has two options to renew this Agreement. The first option to renew shall extend the term of this Agreement from _____,

through _____, and the second option shall extend the term of this Agreement from _____, through _____. Each option to renew shall be deemed exercised unless, at least 30 days before the end of the existing term, IVGID or the Firm notifies the other that the notifying party does not intend to extend the term of this Agreement. Thereafter, this Agreement shall automatically renew for successive one year terms unless, at least 90 days before the end of the existing term, IVGID or the Firm notifies the other that the notifying party does not intend to extend the term of this Agreement.

C. PAYMENTS TO FIRM

IVGID shall pay the Firm's counsel for actual hours expended on all assigned matters and direct and indirect expenses as provided herein.

1. Compensation.

a. *Initial Term.* In the Firm's Proposal, it provided IVGID with a proposed hourly rate schedule in which it set forth the proposed hourly rates for the attorney(s) identified therein as likely to provide services to IVGID. A copy of the rate schedule is attached hereto as **Exhibit 1**. The rate schedule notes that the hourly rate for any other shareholder attorney not identified in the Proposal would be \$335 and the hourly rates for non-identified associate attorneys would range between \$200 and \$275. The proposed hourly rates are acceptable to IVGID. As compensation in full for all services to be rendered by the Firm during the initial term of this Agreement IVGID will

pay the Firm for all actual hours expended by the Firm on IVGID matters multiplied by the applicable hourly rates set forth in **Exhibit 1**.

b. *First Option Term.* For the first option term, the Firm's hourly rates shall be increased by _____ percent (___%) over the rates charged during the initial term.

c. *Second Option Term.* For the second option term, the Firm's hourly rates shall be increased by _____ percent (___%) over the rates charged during the first option term.

2. Costs. In its Proposal the Firm provided IVGID with a document entitled "Methods for Charging Direct and Indirect Costs," a copy of which is attached hereto as "**Exhibit 2.**" The cost plan is acceptable to IVGID and shall control the costs for which IVGID will be responsible for reimbursing the Firm during the life of this Agreement.

3. Invoices and Time of Payment. The Firm shall provide statements and invoices to IVGID and IVGID shall pay the same as provided herein.

a. *Form of Statements.* The Firm's statements shall contain: (i) an identification of the attorney(s) performing the services; (ii) a description of the services rendered with a reasonably detailed explanation of the work that was performed; (iii) the time expended for the identified services; and (iv) the charges for each designated service. Additionally, the statements shall identify all costs for which the Firm seeks reimbursement.

b. *Billing Cycle.* The Firm's statements and invoices, together with documents to support direct costs (if requested by IVGID) may be submitted to IVGID

on or before the 15th of each month following the month in which services were performed.

c. *Payment by IVGID.* Subject to IVGID's review and approval of invoices, IVGID shall pay the Firm's invoices within thirty (30) calendar days after receipt. If IVGID challenges a charge (whether for services or costs) and the challenge is not resolved by mutual agreement of the Parties by the payment due date, IVGID shall pay the amount of the unchallenged fees and costs and the challenged fees or costs shall be payable immediately upon resolution of the challenge by the Parties. Unchallenged charges not paid as prescribed shall bear interest at the rate of one percent per month until paid.

d. *Records.* The Firm shall maintain complete records supporting every statement and invoice. IVGID shall have the right to receive and copy said records.

D. OTHER PROVISIONS

1. Time is of the Essence. It is understood and agreed that all times stated and referred to herein are of the essence of this Agreement. The times stated and referred to may be extended by mutual consent for such additional periods as the parties may approve. No extension of time shall be valid unless reduced to writing and signed by the authorized representative of each party.

2. Non-Transferability. This Agreement is for the Firm's professional services, and the Firm's rights and obligations hereunder may not be subcontracted or assigned without the prior written consent of IVGID.

3. Hold Harmless. The Firm agrees to save and hold harmless and fully indemnify IVGID and all its employees or agents from and against all suits, claims, and demands, including attorney's fees, based upon any alleged damage to property or any alleged injury to persons (including death) which may occur or be alleged to have occurred by or on account of any negligent act or omission on the part of the Firm or any of its servants, employees, or agents in providing the services required by this Agreement.

4. Insurance. The Firm shall, at its own expense, maintain in effect at all times during the term of this Agreement, at least the following coverage and limits of insurance which shall be maintained with insurers and under forms and policies reasonably satisfactory to IVGID:

- a) Professional Liability: \$10,000,000 per claim; \$10,000,000 in aggregate.
- b) Workmen's compensation and employer's liability.

The Firm shall furnish IVGID with evidence of its insurance coverages at IVGID's request.

5. Relationship of Parties. The Firm is an independent contractor to IVGID under this Agreement. The Firm is free to contract to provide similar services for others

while it is under contract to IVGID, so long as said services and advocacy are not in conflict with services being provided by the Firm to IVGID and confidentiality is maintained.

6. Termination and Withdrawal. The Board may terminate this Agreement, in whole or in part, at any time with written notice to the Firm when it believes it is in IVGID's best interests to do so. The Firm shall be paid for costs incurred and work performed up to actual date of termination. If the Firm has any property in its possession belonging to IVGID, it shall account for the same, and dispose of it in the manner IVGID directs.

The Firm reserves the right to withdraw from representation of IVGID for any reason consistent with the Nevada Supreme Court's Rules of Professional Responsibility. This may include (without limitation) IVGID's: (a) failure to honor the terms of this Agreement; (b) failure to pay undisputed amounts billed in a timely manner; (c) failure to cooperate or follow the Firm's advice on a material matter; or (d) the occurrence or existence of any fact or circumstance that would reasonably impair an effective attorney-client relationship or which would render the Firm's continuing representation of IVGID unlawful or unethical. The Firm will be entitled to be paid for services rendered and costs incurred on IVGID's behalf up until the actual date of withdrawal.

7. Notices. Any notice or communication required or permitted to be served on a party hereto may be served by personal delivery to the office of the person or

persons identified below. Service may also be made by registered or certified mail, by placing the notice or communication in an envelope addressed as indicated below, and depositing said envelope in the United States Mail.

TO IVGID: Incline Village General Improvement District
 Attention: General Manager
 893 Southwood Boulevard
 Incline Village, NV 89451
 (775) 832-1100

TO FIRM: Woodburn and Wedge
 Attention: Managing Shareholder
 6100 Neil Road, Suite 500
 Reno, Nevada 89511
 (775) 688-3000

The person to be served and the address shown above may be changed at any time by notice to the other party. Service shall be completed upon personal delivery or three (3) days following the time the notice is deposited by registered or certified mail.

8. Governing Law; Jurisdiction. The provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Nevada and the parties hereto submit to the exclusive jurisdiction of the Justice and/or District Courts of the State of Nevada.

9. Severability. To the extent that any term or provision of this Agreement or the application thereof to any circumstance shall be deemed to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms

and provisions of this Agreement. The parties agree that a suitable and equitable term or provision shall be substituted therefore to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

10. Entire Agreement. There are no verbal agreements, representations, or understandings affecting this Agreement, and all negotiations, representations, and undertakings are set forth herein with the understanding that this Agreement constitutes the entire understanding by and between the parties. Except as specifically incorporated herein by direct reference or attachment, nothing in IVGID's RFP or the Firm's Proposal shall survive execution of this Agreement.

11. Amendments. No alternation, amendment, or modification of this Agreement is effective unless it is in writing and signed by both parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT

WOODBURN AND WEDGE

By: _____
Steven J. Rinkerton,
General Manager

By: _____
John F. Murtha, Esq.,
President and Managing
Shareholder

By: _____
Kendra Wong, CPA
Chairwoman of the Board

Exhibit "1"
Legal Services Agreement
Incline Village General Improvement District
and
Woodburn and Wedge

HOURLY RATES SCHEDULE

The hourly rates are for those attorneys who are likely to provide services to the District, but do not include all of our attorneys' hourly rates. Typically associate attorneys will be billed at between \$200 and \$275 per hour and shareholder attorneys will be billed at \$335 per hour.

Name	Position	Hourly Rate
Dale E. Ferguson	Shareholder	\$335
Shawn G. Pearson	Shareholder	\$335
Dane W. Anderson	Shareholder	\$335
Gordon H. DePaoli	Shareholder	\$335
Gregg P. Barnard	Shareholder	\$335
Ellen J. Winograd	Shareholder	\$335
Bronagh M. Kelly	Associate	\$225
Colton T. Loretz	Associate	\$200

Exhibit "2"
Legal Services Agreement
Incline Village General Improvement District
and
Woodburn and Wedge

COSTS

1. Bills for legal services and costs will be sent monthly. Payment is expected within 30 days of delivery.
2. The actual costs charged to us by third party vendors (copy services, court reporters, court fees, etc.) shall be charged to the District without a mark-up or premium.
3. Any non-litigation cost less than \$1,000 shall be advanced by the firm and included as a reimbursable cost on the next bill to the District.
4. For any non-litigation costs anticipated to be more than \$1,000, we would get approval from the District in advance of incurring the cost and we would request that the District pay the cost directly rather than having the firm advance said costs.
5. For costs in litigation matters anticipated to be more than \$2,000 per item, we would get approval from the District in advance of incurring the cost. All litigation costs would be advanced by the firm and included as a reimbursable cost on the next bill to the District.
6. Electronic legal research (we use Westlaw) will be billed at 75% of the amount charged to us.
7. There will be no travel costs associated with any trips between Reno and Incline Village. Otherwise, all automobile travel will be charged at the rate of \$.55 per mile.
8. All air travel will be billed at the cost for a coach class seat. If the traveler books a premium seat (business class or first class) he/she shall pay the cost over and above the cost of a coach class seat.

9. Lodging will be billed at any time an attorney is more than 100 miles from Reno at the end of the business day (5:30 p.m.).
10. Meals are charged only if the attorney or staff person is traveling outside the Reno, Sparks or North Lake Tahoe area. Meal charges will not include alcoholic beverages.
11. In-house photocopies will be billed at the rate of \$.20 per page. Any copy job anticipated to total more than 500 pages will be sent to a third party vendor, if time permits.
12. There is no charge for phone calls or faxes.
13. Staff overtime will only be billed if it is necessary to meet a litigation deadline or other deadline imposed by the District. Overtime will be billed at 1.5 times the staff person's normal hourly rate.

MEMORANDUM

TO: Board of Trustees

FROM: Steven J. Pinkerton
General Manager

Jason D. Guinasso, Esq.
District General Counsel

SUBJECT: 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

DATE: January 28, 2019

I. RECOMMENDATION

That the Board of Trustees makes a motion to authorize District Legal Counsel to file a Petition for Judicial Review of the Office of Attorney General (OAG) File No. 13897-257 Findings of Fact and Conclusions of Law.

II. EXECUTIVE SUMMARY

On November 27, 2017, Mr. Frank Wright complained that an alleged meeting between the IVGID Board of Trustees and District Legal Counsel, held on November 15, 2017, was a violation of the Open Meeting Law (OML).

With respect to the actual issue presented to the OAG by Mr. Wright's complaint, the OAG concluded that IVGID did **not** violate the OML when it attempted to hold an attorney-client non-meeting with District Legal Counsel.

However, after reviewing the OML Complaint for over fourteen months, the OAG took the extraordinary step of reaching findings and conclusions on an issue that was not presented to the OAG. In this regard, the OAG found that, *"the Board violated the OML by taking action authorizing the initiation of the Lawsuit during its Attorney-Client Session."*

IVGID disagrees with this part of the decision reached by the OAG because it exceeds the scope of the OML Complaint, is an untimely decision, and is otherwise not supported by substantial evidence.

That being said, the OAG's Findings of Fact and Conclusions of Law are academic and do not penalize IVGID in any way.

III. BACKGROUND

On November 27, 2017, Frank Wright filed an OML Complaint with the OAG under File No. 13897-257. In this complaint, Mr. Wright specifically alleged:

"Incline Village General Improvement District held announcement, closed, secret meeting of five Board Members outside the view of the Public."

See Exhibit A (November 27, 2017 Complaint of Frank Wright). Mr. Wright complained that an alleged meeting between the IVGID Board of Trustees and District Legal Counsel on November 15, 2017, was a violation of the OML. Mr. Wright's complaint was a hearsay narrative of *"one resident who attended the regular board meeting but was still present and unnoticed and sitting in the room."* Mr. Wright's allegations were based off the information provided by his *"witness"* that *"Chairman [sic] continued with the unannounced and not publicly posted meeting."* Mr. Wright restates the events in a way that is both false and misleading, by stating his *"witness"* saw two Trustees reject the special meeting as a violation of the OML and proceeded to walk out (Trustees Matthew Dent and Tim Callicrate). It was also at this time that Mr. Wright's *"witness"* was approached by Director of Finance Gerry Eick, whom escorted her to the door, and closed the door after she left the room. Mr. Wright appears to argue that the litigation non-meeting should have been noticed as a meeting under the OML.

Notably, the OML Complaint did **not** allege that, *"The Board took action to approve the initiation of litigation during a closed session."* In fact, the OML complaint is completely devoid of this allegation, any facts giving rise to such allegation, or any other fact that would require an OAG investigation into such allegation.

Nevertheless, the OAG claims to have conducted an "investigation" into the foregoing allegations. **See Exhibit B at 1:14-25 (OAG FoFCoL).** This investigation is said to have included, *"witness interviews, as well as, Complaint and Supplements to the Complaint."* However, no statements from witness interviews or Supplements to the Complaint were ever provided to IVGID so it could review and respond. Nothing in the Findings of Fact cites or references the *"witness interviews"* or provides any facts related thereto. Further, no indication of when the *"Supplements to the Complaint"* were given to the OAG and when.

On November 30, 2017, the OAG sent a correspondence to IVGID Chairwoman Kendra Wong and requested a response to Mr. Wright's OML Complaint. **See Exhibit C (November 30, 2017 Letter to Chair Wong from OAG)**. However, the OAG failed to copy District Legal Counsel. Consequently, District Legal Counsel did not receive the OAG's correspondence and had to request an extension of time to respond which was granted.

Meanwhile, on December 14, 2017, the OAG send emails to each of the five IVGID Board Trustees requesting to conduct telephonic interviews. **See Exhibit D (OAG Emails to Trustees)**. This request was met with vigorous opposition from District Legal Counsel because the OAG is prohibited by sections 1.3 and 4.2 of the Nevada Rules of Professional Conduct from communicating with Trustees directly without consent of District Legal Counsel. **See Exhibit E (Email String Objecting to OAG direct communication with IVGID Trustees)**. District Legal Counsel respectfully requested that any further communications with IVGID Trustees go through his office. Further, District Legal Counsel offered to schedule the interviews for the OAG. In response, the OAG agreed to having District Legal Counsel schedule the interview, but later the OAG decided not to conduct the interviews.

On December 22, 2017, District Legal Counsel provided the District's response to Mr. Wright OML Complaint. **See Exhibit F (December 22, 2017, IVGID Response)**. District Legal Counsel pointed out that Mr. Wright was not even present at the conclusion of the November 15, 2017 Board of Trustees meeting, so his assertions that there was a "closed" or "secret meeting" are not credible or reliable and are otherwise false assertions. Indeed, whether Mr. Wright had standing to bring this OML complaint without firsthand knowledge of the alleged facts that he asserted support his charge that there was a violation of the OML, is an open question that has not been addressed in the OML, by the OAG in any published opinion, or within the OAG's Open Meeting Law Manual.

Mr. Wright's complaint was clearly meritless. IVGID did not conduct a "closed, secret meeting" of the Board of Trustees. NRS 241.015(3)(b)(2) is clear when it excludes from the definition of "Meeting," for purposes of the OML, a meeting of a quorum of a public body:

"[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both."

Section 3.05 of the OAG's Open Meeting Law Manual further explains:

A meeting held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to NRS 241.015(3)(b)(2) is not a meeting for purposes of the Open Meeting Law and does not have to be open to the public. In fact, no agenda is required to be posted and no notice is required to be provided to any member of the public. See OMLO 2002-21 (May 20, 2002) ...

It is important to note that a public body may deliberate "collectively to examine, weigh and reflect upon the reasons for or against the action," which connotes collective discussion in an attorney-client conference. See NRS 241.015(2); Dewey v. Redevelopment Agency, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003), OMLO 2001-09 (March 28, 2001) and OMLO 2002-13 (March 22, 2003).

On November 15, 2017, at approximately 9:55 p.m., Chairwoman Wong called for a five-minute break and stated the Board meeting would resume session at 10:00 p.m. The livestream video of November 15, 2017 can be viewed at the following link: <https://livestream.com/accounts/3411104> identified as **Exhibit "G"**. Before the IVGID Board of Trustees resumed its meeting, the power went out. At that time, Chairwoman Wong removed General Business Items G through K from the agenda and moved them to the agenda for the next meeting. Chairwoman Wong allowed for the final public comment period, even though the power had gone out, and once everyone had an opportunity to speak, Chairwoman Wong adjourned the regular meeting.

Immediately thereafter, Chairwoman Wong asked the Trustees to stay to participate in a litigation non-meeting. As she attempted to commence the meeting, a member of the public would not leave the room after multiple requests, so Chairwoman Wong asked Gerry Eick, Director of Finance, to escort the person out of the room. Once the litigation non-meeting commenced, District Legal Counsel asked Trustee Matthew Dent to excuse himself because of a conflict-of-interest regarding the subject of the litigation non-meeting. Trustee Callicrate objected to Trustee Dent being asked to leave.

Consequently, District Legal Counsel concluded the litigation non-meeting and offered to meet with each Trustee individually. The litigation non-meeting did not last more than ten minutes. Subsequently, District Legal Counsel did follow up with each Trustee and was able to meet with four of the five Trustees individually by phone or in person.

On January 5, 2018, the OAG sent a letter to IVGID requesting a supplemental response to Mr. Wright's OML Complaint. **See Exhibit H (January 5, 2018, OAG Letter)**. As stated in the letter, the question(s) the OAG asked IVGID to address was the following:

Did the Board initiate any state or federal court lawsuit in 2017? If yes, did the Board initiate the lawsuit(s) by taking action during a public meeting?

This was a strange question for the OAG to be asking given the fact that this question was far outside the scope of Mr. Wright's OML Complaint. It was not a question the OAG had jurisdiction or authority to investigate. Nevertheless, District Legal Counsel provided a supplemental response on January 18, 2018. **See Exhibit I (IVGID Supplemental Response)**. District Legal Counsel explained that the **IVGID Board** did **not** initiate any state or federal court lawsuit in 2017. However, in May of 2017, the IVGID **General Manager** authorized a lawsuit in Washoe County District Court under Case No. CV17-00922, to obtain declaratory and injunctive relief with respect to the provisions of a contract between IVGID and a local company.

Six months transpired without any contact from the OAG.

However, after the litigation ended with a negotiated settlement agreement, District Legal Counsel provided the OAG with another supplemental response informing the OAG that there had been a change to IVGID Policy 3.1.0. **See Exhibit I (IVGID Second Supplemental Response)**. Thereafter, the OAG did not act on Mr. Wright's Complaint until issuing Findings of Fact and Conclusions of Law on January 17, 2019.

IV. OAG Findings of Fact and Conclusions of Law

With respect to the actual issue presented to the OAG by Mr. Wright's Complaint, the OAG concluded that IVGID did **not** violate the OML when it attempted to hold an attorney-client non-meeting with District Legal Counsel.

However, the OAG took the extraordinary step of reaching findings and conclusions on an issue that was not presented to the OAG. In this regard, the OAG found that, *"the Board violated the OML by taking action authorizing the initiation of the Lawsuit during its Attorney-Client Session."*

IVGID disagrees with this part of the decision reached by the OAG because it exceeds the scope of the OML Complaint, is an untimely decision, and is otherwise not supported by substantial evidence.

On June 29, 2017, after IVGID had filed its lawsuit in May of 2017, a three-judge panel of the Nevada Supreme Court concluded:

Since filing an appeal involves the commitment of public funds, we hold that the decision to file a notice of appeal requires an “action” by the public body. Just as a public body would need to meet in an open meeting to determine other material steps in the litigation process, such as initiating a lawsuit or agreeing to a settlement, it must also authorize an appeal of an adverse determination in an open meeting.

Comm'n on Ethics v. Hansen, 133 Nev. Adv. Op. 39, 396 P.3d 807, 809–10 (Nev. 2017), reh'g denied (Sept. 29, 2017), reconsideration en banc granted (Dec. 20, 2017).

However, the holding in Hansen does not apply to IVGID’s cause of action. In this regard, the Court in Hansen specifically stated:

The dissent's analysis presupposes that the authority to file a notice of appeal is (1) delegable and (2) was delegated in this case. The dissent also cites City of San Antonio v. Aguilar, 670 S.W.2d 681 (Tex. App. 1984), rejecting a Texas Open Meeting Act appeal filed by a city attorney based on the city attorney's separate authority under the city's ordinances.

Here, whether the authority to file a notice of appeal is delegable is not germane to our analysis because the record does not show and nothing in the statutes or regulations concerning the Ethics Commission provides for a grant or delegation of decision-making authority to the Commission's chair, director, or legal counsel to file a notice of appeal without action by the Commission as a whole

Id.

Here, the IVGID General Manager, with the authority delegated to him by the IVGID Board of Trustees, authorized the lawsuit to obtain declaratory and injunctive relief with respect to the provisions of the contract between IVGID and a local company. The expenditure of public funds for contracted legal fees and costs, as well as the value of the lawsuit, was and remains to date less than \$50,000, which is within the authority delegated to the General Manager under IVGID Policy 3.1.0 (f) & (g), Resolution No. 1480 and under Section 3 of the contract for legal services the District has entered into with General Counsel.

The Nevada Open Meeting Law (“OML”) does not apply to decisions and actions of the General Manager of a “public body.” While the IVGID Board of Trustees, which was formed in accordance within the provisions of NRS Chapter 318, is a “public body” under NRS 241.015(4), the General Manager acting within the powers delegated to him by the Board of Trustees is not a “public body” subject to the provisions of the OML.

Additionally, the “actions” of the General Manager are not subject to the Nevada OML. In this regard, “action” under the OML is defined to mean, “decision,” “commitment or promise made,” or “an affirmative vote” taken, by “a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body.” NRS 241.015(1)(a),(b),(c). The actions taken by the General Manager in May of 2017, to authorize the lawsuit now being considered by the Court to obtain injunctive relief and to enforce the provisions of a contract with a company that contracted with the District are within the authority delegated to him and do not constitute an unauthorized expenditure of public funds.

Notably, when the District Court had jurisdiction over the litigation between IVGID and this local company, under Case No. CV17-00922, the local company made a similar argument to the Court as is articulated by the OAG in the Findings of Fact and Conclusions of Law. However, the District Court granted IVGID’s preliminary injunction and rejected the argument that there was an “unauthorized expenditure of public funds” when the District General Manager approved the litigation in accordance with his authority.

V. ALTERNATIVES

Do not approve Petition for Judicial Review. The OAG’s Findings of Fact and Conclusions of Law are academic and do not penalize IVGID in any way.

VI. COMMENTS

While this is a petition for judicial review, we are treating it like the initiation of a lawsuit and bringing it before the Board of Trustees in accordance with Policy 3.1.0, 0.6 Rules of Proceedings, subparagraph h. which reads “*The General Manager must obtain Board of Trustees authorization, at a public meeting, to initiate any lawsuit.*” Additionally, the cost of doing the petition for judicial review will not exceed \$5,000 and while that is within the General Manager’s authority, we again want to bring it forth as a decision that the Board of Trustees gets to make.

OPINION

*Rec'd 1-22-2019
JAL*

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of:

OAG FILE NO.: 13897-257

THE INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT BOARD OF
TRUSTEES

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

BACKGROUND

Frank Wright filed a Complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID) Board of Trustees (Board). The Complaint alleges that the Board violated the OML as follows:

ALLEGATION NO. 1: The Board took action to approve the initiation of a lawsuit during a closed session.

ALLEGATION NO. 2: The Board held a closed meeting that was not properly noticed to the public.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG's investigation of the Complaint included witness interviews as well as a review of the following: the Complaint and Supplements to the Complaint; the Response and Supplemental Response to the Complaint from the Board's legal counsel; affidavits and recorded statements from members of the Board as well as staff members of the Board; the Board's agendas and minutes from its 2017 and 2018 meetings; and court filings with the Second Judicial District Court of Nevada.

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. The OAG finds that the Board's closed session following its November 15, 2017,

1 meeting constituted an attempted attorney-client session that was exempt from the OML's
2 requirements.

3 **FINDINGS OF FACT**

4 1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to
5 the OML.

6 2. The Board is comprised of five (5) elected voting members.

7 3. On or about April 28, 2017, the Board's legal counsel, Jason Guinasso, met
8 with Board Chair Kendra Wong, Vice Chair Philip Horan, and Trustee Peter Morris during
9 a closed attorney-client session (Attorney-Client Session). Board Trustee Tim Callicrate
10 did not attend the Attorney-Client session. Trustee Matthew Dent also did not attend the
11 Attorney-Client session after the Board's legal counsel asked him to leave the session due
12 to an alleged conflict of interest.

13 4. A quorum of Board members were present at the Attorney-Client session.

14 5. During the Attorney-Client Session, IVGID's General Manager, General
15 Counsel, and staff members discussed the impending initiation of a lawsuit with
16 Governance Sciences Group, Inc. (GSGI) with the Board members in attendance.

17 6. On or about May 12, 2017, the Board, by and through its General Manager and
18 General Counsel, initiated a lawsuit (Lawsuit) in the Second Judicial District Court of Nevada
19 against GSGI in case number CV17-00922.

20 7. The Board did not authorize the Lawsuit during a public meeting.

21 8. Neither the Board's Policies and Practices, its Policy and Procedure
22 Resolutions, nor its retainer agreement with legal counsel grant the authority to the
23 Board's General Manager or legal counsel to initiate lawsuits on behalf of the Board.¹

24 9. Policy 3.1.0(g) of the Board's Policies and Practices governs claims involving
25 the Incline Village General Improvement District (IVGID), and it provides the following:
26

27 ¹ The OAG notes that a public body's authority to delegate power to initiate lawsuits,
28 or other materials steps in a legal process, is not addressed in this Opinion. Rather, the
OAG finds that the Board did not delegate its authority to initiate lawsuits through its
existing policies or resolutions.

1 "The General Manager and General Counsel, and their designees,
2 are authorized to negotiate on behalf of IVGID, the
3 settlement of all property damage, personal injury, or liability
4 claims, unless otherwise ordered by the Board of Trustees. Final
5 Settlement of such claims may be authorized by the General
6 Manager, provided the amount attributed to IVGID is less than
7 the amounts per occurrence, including all sources of payment
(insurance, risk reserve, operating funds, or working capital). For
8 claims that exceed the amount, those must be approved by the
9 Board, the General Manager may authorize and accept a
10 tentative settlement, which shall not be final and binding upon
11 IVGID, unless and until approved by the Board of Trustees."

12 10. The Board's Policy and Procedure Resolution 1480 governs personnel
13 management and it provides that IVGID's General Manager "shall be responsible for
14 coordinating the work of [IVGID's legal counsel] with the activities of IVGID staff, and the
15 Board of Trustees."

16 11. Term 4.1.6 of the Board's retainer agreement with legal counsel, of the law firm
17 Reese Kintz Guinasso, LLC, provides that legal counsel shall "prosecute or defend litigation,
18 as directed by the IVGID General Manager, including mediation, validation proceedings, and
19 arbitrations before administrative boards, arbitrators, mediators, courts of all levels of the
20 county, state or federal governments and report to the IVGID General Manager on that
21 litigation regularly."

22 12. On November 15, 2017, the Board held a public meeting ("Meeting").

23 13. Following the Meeting, the Board's members entered a closed attorney-client
24 conference to discuss pending litigation matters with their legal counsel. Members of the
25 public were asked to leave or were escorted out of the meeting venue. Board Trustees Tim
26 Callicrate and Matthew Dent left the attorney-client conference prior to the start of the
27 session.
28

...

...

...

...

...

1 LEGAL STANDARDS AND CONCLUSIONS OF LAW

2 1. The Board violated the OML by failing to take action during a Public
3 Meeting authorizing the initiation of the Lawsuit.

4 In enacting the OML, “the Legislature finds and declares that all public bodies exist to
5 aid in the conduct of the people’s business. It is the intent of the law that their actions be
6 taken openly and that their deliberations be conducted openly.” NRS 241.010(1); *McKay v.*
7 *Bd. of Supervisors*, 102 Nev. 644, 651 (1986). While public bodies may hold closed attorney-
8 client conferences to receive information regarding potential or existing litigation from
9 their attorney and to deliberate towards a decision on the litigation, the “legal advice”
10 exception to the OML does not extend to actions taken by the bodies. See NRS
11 241.015(3)(b)(2). Rather, a decision that “transcends ‘discussion or consultation’ and
12 entails a ‘commitment’ of public funds,” including initiating a lawsuit, requires action
13 during a properly noticed public meeting. See *Johnson v. Tempe Elementary Sch. Dist. No.*
14 *3 Governing Bd.*, 199 Ariz. 567, 568, 20 P.3d 1148, 1149 (Ariz. Ct. App. 2000), as amended
15 (Mar. 22, 2001).

16 Under the OML, a “meeting” is “[t]he gathering of members of a public body at which
17 a quorum is present, whether in person or by means of electronic communication, to
18 deliberate toward a decision or to take action on any matter over which the public body has
19 supervision, control, jurisdiction or advisory power.” NRS 241.015(3)(a)(1). The OML
20 defines a quorum as “a simple majority of the membership of a public body or another
21 proportion established by law.” NRS 241.015(5).

22 Exceptions to the OML’s requirements, including the ability to hold closed attorney-
23 client sessions, “must not be used to circumvent the spirit or letter of this chapter to
24 deliberate or act, outside of an open and public meeting, upon a matter over which the
25 public body has supervision, control, jurisdiction or advisory powers.” NRS 241.016(4).

26 Here, the Board violated the OML by taking action authorizing the initiation of the
27 Lawsuit during its Attorney-Client Session. As at least three of the Board members
28 attended the Attorney-Client Session, a quorum of the Board was present. While the Board

1 members could meet with their legal counsel for an attorney-client session without noticing
2 the session pursuant to the OML, their session could not extend the deliberation regarding
3 the Lawsuit into taking action to initiate the Lawsuit. In exceeding permissible
4 deliberation regarding the Lawsuit, and taking action to approve initiation of the Lawsuit,
5 the Board exceeded the purview of a closed attorney-client session. By using the OML's
6 attorney-client exception to take action regarding the Lawsuit, the Board circumvented the
7 spirit of the OML to take all action during open and public meetings during which members
8 of the public may participate.

9 The Board argues that the authority to initiate the Lawsuit was delegated to its
10 General Manager and General Counsel through the Board's Policies and Practices, its
11 Policy and Procedure Resolutions, and its retainer agreement with legal counsel. However,
12 a careful reading of the noted documents fails to support the Board's claim. Policy 3.1.0(g),
13 which the Board argues delegates authority to initiate lawsuits, is silent regarding the
14 initiation of lawsuits. Rather, it allows the General Counsel and General Manager to
15 "negotiate on behalf of IVGID" the settlement of property damage, personal injury, or
16 liability claims. The settlement of an existing claim is clearly different from the initiation
17 of a lawsuit. Policy and Procedure Resolution 1480 governs personnel management of
18 IVGID employees and it provides that the General Manager is responsible for coordinating
19 the work of the Board's legal counsel with the activities of IVGID's staff and Board. Policy
20 and Procedure Resolution 1480 does not contemplate the delegation of the Board's
21 authority to initiate lawsuits. Finally, the Board's reliance on the retainer agreement with
22 legal counsel is misplaced given that the retainer agreement is silent regarding the
23 initiation of a lawsuit. Notwithstanding the fact that the retainer agreement is merely a
24 contract for payment, not a policy or resolution adopted by the Board, the agreement does
25 not authorize the Board's General Manager or legal counsel to initiate lawsuits. While
26 "prosecution" of litigation on behalf of the Board may include strategy decisions, filing
27 briefs, and representing the Board during hearings, the retainer agreement does not
28 delegate authority to the General Manager or legal counsel to initiate lawsuits or "charge"

1 misconduct on behalf of the Board. Absent action by the Board to delegate the authority to
2 initiate lawsuits to its General Counsel or General Manager, the Board was obligated to
3 take action to initiate the Lawsuit during a public meeting. The fact that the Lawsuit was
4 filed shortly after the Attorney-Client Session evidences Board approval, tacit or otherwise,
5 to initiate the Lawsuit.

6 Ultimately, the Board took action during its closed Attorney-Client Session to
7 authorize the initiation of the Lawsuit, when it had not delegated the authority to initiate
8 lawsuits to its staff, and it therefore violated the OML.

9 **2. The Board did not violate the OML by holding a Closed Attorney-Client**
10 **Conference that was not noticed to the Public.**

11 The OML requires that "all meetings of public bodies must be open and public, and
12 all persons must be permitted to attend any meeting of these public bodies" unless
13 otherwise provided by specific statute. Nevada Revised Statute (NRS) 241.020(1). The
14 OML defines a meeting to include the following: "the gathering of members of a public body
15 at which a quorum is present, whether in person or by means of electronic communication,
16 to deliberate toward a decision or to take action on any matter over which the public body
17 has supervision, control, jurisdiction or advisory power" or "any series of gatherings of
18 members of a public body at which: (I) Less than a quorum is present, whether in person
19 or by means of electronic communication, at any individual gathering; (II) The members of
20 the public body attending one or more of the gatherings collectively constitute a quorum;
21 and (III) The series of gatherings was held with the specific intent to avoid the provisions
22 of this chapter. NRS 241.015(3).

23 A meeting does not include a gathering, or series of gatherings, of a quorum of the
24 members of a public body, when the purpose of the gathering is for the members to receive
25 information from the public body's attorney regarding potential or existing litigation
26 involving a matter over which the public body has supervision, control, jurisdiction, or
27 advisory power, and/or to deliberate toward a decision on the matter. NRS 241.015(3)(b)(2).

28 ...

1 Here, following the conclusion of the Board's November 15, 2017, meeting, the
2 Board's members entered into a closed attorney-client session with their counsel to discuss
3 existing litigation. The record, including affidavits from the Board's members and counsel,
4 indicate that the closed attorney session never proceeded based on objections to the session
5 by Trustee Callicrate.² As the Board did not conduct a closed meeting without notice to
6 the public, it did not violate the OML. Moreover, even if the closed attorney-client session
7 had occurred, the Board would not have committed an OML violation so long as the session
8 was limited to discussion and deliberation on existing litigation that did not extend to
9 action by the Board.

10 SUMMARY AND INCLUSION OF AGENDA ITEM

11 If the Attorney General investigates a potential OML violation and makes findings
12 of fact and conclusions of law that a public body has taken action in violation of the OML,
13 "the public body must include an item on the next agenda posted for a meeting of the public
14 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The
15 public body must treat the opinion of the Attorney General as supporting material for the
16 agenda item in question for the purpose of NRS 241.020. *Id.*


17 Here, upon investigating the present Complaint, the OAG makes a findings of fact
18 and conclusions of law that the Board committed an OML violation by taking action to
19 authorize the initiation of the Lawsuit during its closed Attorney-Client Session.
20 Therefore, the Board must place an item on its next Board Meeting agenda in which the
21 Board acknowledges the present Findings of Fact and Conclusions of Law ("Opinion")
22 which results from the OAG investigation in the matter of Attorney General File No. 13897-
23 257. The Board must also include the OAG Opinion in the supporting materials for its next
24 meeting.

25
26 ² At the start of the closed attorney session, the Board's counsel, Mr. Guinasso, asked
27 Trustee Dent to leave due to an alleged conflict of interest on Trustee Dent's part. Trustee
28 Callicrate argued that Trustee Dent should be allowed to participate in the session. When
Board Chair Wong and Counsel Guinasso refused to allow Trustee Dent to participate in
the session, Counsel Guinasso cancelled the session and indicated that he would address
the legal matters with each trustee individually.

1 The OAG further notes that had it timely learned of the OML violation regarding
2 the initiation of the Lawsuit, that it would have filed suit in district court to have the action
3 declared void. Through no fault of Mr. Wright, who appears to have filed his Complaint
4 promptly after learning about the initiation of the Lawsuit during the closed session, the
5 OAG learned of the Board's initiation of the Lawsuit outside the OML's 60-day deadline for
6 the OAG to commence a suit to have the action declared void. As such, the OAG's only
7 available recourse is to require the Board's compliance with the agenda inclusion
8 requirements pursuant to NRS 241.0395.

9 DATED: January 17, 2019.

10 AARON D. FORD
11 Attorney General

12 By: 
13 CAROLINE BATEMAN
14 First Assistant Attorney General

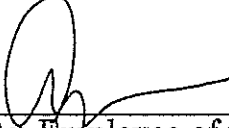
CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of January, 2019, I served the **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

Frank Wright
P.O. Box 186
36 Somers Loop
Crystal Bay, NV 89402
Certified Mail No. 7014 2120 0003 0404 8554

Kendra Wong, Chair
Incline Village General Improvement District
893 Southwood Blvd.
Incline Village, NV 89451
Certified Mail No. 7014 2120 0003 0404 8578

Jason Guinasso
Hutchison & Steffen
500 Damonte Ranch Parkway, Ste. 980
Reno, NV 89521
Certified Mail No. 7014 2120 0003 0404 8561



An Employee of the
Office of the Attorney General
State of Nevada

**SUPPLEMENT TO
THE
RESPONSE**



500 DAMONTE RANCH PARKWAY, SUITE 980
RENO, NV 89521
775.853.8746
FAX 775.201.9611
HUTCHILEGAL.COM

JASON D. GUINASSO
PARTNER
JGUINASSO@HUTCHILEGAL.COM

January 19, 2018

*Via Electronic Mail- CBateman@ag.nv.gov
& Hand Delivery to:*

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
Boards and Open Government Division
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

**Re: SUPPLEMENTAL RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT
DISTRICT BOARD OF TRUSTEES- OPEN MEETING LAW COMPLAINT, WRIGHT, FRANK
O.A.G. FILE NO. 13897-257 IN RESPONSE TO OAG’S REQUEST FOR ADDITIONAL
INFORMATION**

Dear Ms. Bateman:

We received your letter dated January 5, 2018, on January 11, 2018, notifying the Incline Village General Improvement District (herein referenced as “IVGID” or “District”) that you needed additional information in response to the above referenced complaint by Frank Wright alleging that IVGID has violated the Nevada Open Meeting Law (“OML”). Please accept this correspondence as IVGID’s supplemental response.

I. Issues Presented

As stated in your letter, the question(s) you would like IVGID to address include the following:

Did the Board initiate any state or federal court lawsuit in 2017? If yes, did the Board initiate the lawsuit(s) by taking action during a public meeting?

II. Answer

No, the IVGID Board did not initiate any state or federal court lawsuit in 2017.

However, in May of 2017, the IVGID General Manager authorized a lawsuit in Washoe County District Court under Case No. CV17-00922, to obtain declaratory and injunctive relief with respect to the provisions of a contract between IVGID and a company called Governance Sciences Group, Inc. **See Exhibit A (Summons, Complaint, Motion for Preliminary Injunctive Relief); Exhibit B (Order Denying Motion to Dismiss); Exhibit C (Order Granting Preliminary Injunction).** The contracted fees and costs, as well as the value of the law suit, is less than \$50,000 and within the authority delegated to the General Manager’s under IVGID Policy 3.1.0 (f) & (g), Resolution No. 1480 and under Section 3 of the contract for legal services the District has entered into with legal counsel. **See Exhibit D (Policy 3.1.0; Resolution No. 1480; Copy of Legal Counsel Contract with IVGID).**


Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
January 19, 2018

III. Closing Remarks

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 Frank Wright, A.G. File No. 13897-257.

Sincere regards,



HUTCHISON & STEFFEN, LLC
Jason D. Guinasso, Esq.

Encl.

cc: Chairwoman Kendra Wong
General Manager Steve Pinkerton
District Clerk Susan Herron

JDG:bf

EXHIBIT A

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a General Improvement District,

Plaintiff / Petitioner / Joint Petitioner,

Case. No. CV17-00922

vs.

Dept. No. 8

GOVERNANCE SCIENCES GROUP, INC.,
Delaware Corporation; and DOES 1-50 inclusive,

Defendant / Respondent / Joint Petitioner.

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: _____

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
 - a. File with the Clerk of the Court, whose address is shown below, a formal written answer to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
 - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this _____ day of **MAY 16 2017**, 20_____.

Issued on behalf of Plaintiff(s): Incline Village General Improvement District, a General Improvement District
Name: Jason D. Guinasso, Esq.
Address: 190 W. Huffaker Lane, Suite 402
Reno, NV 89511
Phone Number: (775) 832-6800

JACQUELINE BRYANT
CLERK OF THE COURT
By: _____
Deputy Clerk
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

1 CODE 1067

2 IN THE SECOND JUDICIAL DISTRICT COURT
3 IN AND FOR THE COUNTY OF WASHOE

4 Incline Village General Improvement District, a
5 General Improvement District,
6 Plaintiff(s),

CASE NO: CV17-00922

7 VS.

8 Governance Sciences Group, Inc., a Delaware
9 Corporation; and DOES 1-50,
10 Defendant(s),

11 DECLARATION OF SERVICE

12 STATE OF NEVADA
13 COUNTY OF WASHOE ss.:

14 JENLEE KNIGHT PARKER R -067702, being duly sworn says: That at all times herein Affiant was and is a citizen of
15 the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is
16 made.

17 That Affiant received copy(ies) of the SUMMONS; COMPLAINT; MOTION FOR PRELIMINARY INJUNCTIVE RELIEF O
18 n 5/19/2017 and served the same on 5/26/2017 at 3:30 PM by delivery and leaving a copy with:

19 Kevin Lyons - Registered Agent, pursuant to NRS 14.020 as a person of suitable age and discretion, of the
20 office of Kevin Lyons, registered agent for Governance Sciences Group, Inc., at the registered address of:

21 703 Tyner Way, Incline Village, NV 89451

22 A description of Kevin Lyons is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Male	White	Black	36-40	5'6 - 6'0	160-180 Lbs

23 Other Features: Goatee and hair with gray streaks

24 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

25 Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the
26 foregoing is true and correct.

27 Executed on: 5/30/2017
28 by JENLEE KNIGHT PARKER R -067702
Registration: R-067702

No notary is required per NRS 53.045

X 
 JENLEE KNIGHT PARKER R -067702
 Registration: R-067702
 Reno Carson Messenger Service, Inc #322
 185 Martin St.
 Reno, NV 89509
 (775) 322-2424
 www.renocarson.com



Order#: R10956 NVPRF411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

SUMMONS AND DECLARATION OF SERVICE

(Title of Document)

filed in case number: CV17-00922

Document does not contain the social security number of any person

- OR -

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

- or -

For the administration of a public program

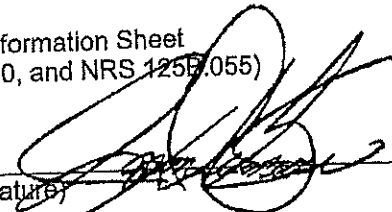
- or -

For an application for a federal or state grant

- or -

Confidential Family Court Information Sheet
(NRS 123.130, NRS 125.230, and NRS 125B.055)

Date: 6/2/17



(Signature)

Jason D. Guinasso, Esq.

(Print Name)

Incline Village General Improvement District

(Attorney for)

1 **CODE: \$1425**
2 JASON D. GUINASSO, ESQ. (SBN# 8478)
3 REESE KINTZ GUINASSO, LLC
4 190 W Huffaker Lane, Suite 402
5 Reno, Nevada 89511
6 Telephone: (775) 832-6800
7 Facsimile: (775) 832-6801
8 jguinasso@rkglawyers.com
9 *Attorney for Plaintiff*

6 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

10 INCLINE VILLAGE GENERAL
11 IMPROVEMENT DISTRICT, a General
12 Improvement District,

13 Plaintiff,

14 vs.

15 GOVERNANCE SCIENCES GROUP,
16 INC., a Delaware Corporation; and DOES 1-
17 50 inclusive,

18 Defendant.

Case No.:

Dept. No.:

COMPLAINT

18 Plaintiff, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
19 ("Plaintiff") hereby brings this Complaint against Defendant, GOVERNANCE SCIENCES
20 GROUP, INC., and DOES 1 through 50, inclusive, ("Defendant") and alleges as follows:

21 **I. PARTIES, JURISDICTION, AND VENUE**

22 1. Plaintiff, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
23 ("IVGID"), is a special purpose district organized under Chapter 318 of the Nevada Revised
24 Statutes, and is located on the North Shore of Lake Tahoe.

25 ///



Reese Kintz
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 833-8746

1 8. The purpose of the relationship between GSGI and IVGID was to allow
2 GSGI to develop a platform in which IVGID was able to put forth surveys to its customers,
3 receiving feedback on a range of topics, to allow IVGID to better serve its customers.

4 9. On April 6, 2015 and April 17, 2015, in order to further develop a customer
5 data list to allow GSGI to provide surveys to IVGID's customers, IVGID sent
6 correspondence to its customers, inviting them to sign up for the service, and participate in
7 the program. A true and correct copy of said April 6, 2015 and April 17, 2015
8 correspondence is attached hereto at Exhibit 1.

9 10. On May 10, 2016, GSGI entered into a Services Agreement ("Agreement")
10 with IVGID, wherein GSGI agreed to provide continuing standard tier "FlashVote" services
11 and surveys to IVGID. A true and correct copy of the Agreement is attached hereto at
12 Exhibit 2.

13 11. The Agreement service term commenced on May 1, 2016, and was set to run
14 until April 30, 2017.

15 12. The purpose of the Agreement was for GSGI to provide survey services,
16 wherein IVGID would develop questions to pose to its customers, and GSGI would compile
17 a list of IVGID customers on behalf of IVGID through IVGID's request for its customers to
18 sign up for the service, and GSGI would publish an electronic survey to such customers.

19 13. Section 3.1 of the Agreement defines "Proprietary Information" of IVGID as
20 "non-public data provided by Customer to Company to enable the provision of the Services
21 ("Customer Data") such as non-public citizen email addresses or other non-public data."

22 14. Section 3.1 of the Agreement states that GSGI was "(i) to take reasonable
23 precautions to protect such Proprietary Information, and (ii) not to use (except in
24 performance of the Services or as otherwise permitted herein) or divulge to any third person
25 any such Proprietary Information."



Rings Clinic,
Olinasto
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 15. Section 3.2 of the Agreement states that IVGID "shall own all right title and
2 interest in and to the Customer Data."

3 16. GSGI was retained to provide survey services, with the understanding that
4 IVGID was able to control the content of such surveys.

5 17. On numerous occasions, GSGI attempted to redraft the survey language
6 prepared by IVGID, and presented by IVGID for GSGI to publish within the contracted
7 survey services.

8 18. GSGI's redraft of the survey language submitted by IVGID was beyond the
9 terms of the Agreement, and beyond the expertise of GSGI.

10 19. On July 28, 2016, GSGI sent a FlashVote survey on behalf of a client other
11 than IVGID, with such survey stating, "This survey was sent on behalf of the Incline Village
12 General Improvement District", with GSGI using IVGID's Customer Data, prepared on
13 behalf of IVGID, to distribute such survey.

14 20. On November 30, 2016, GSGI indicated its refusal to provide services and
15 publish survey question language as drafted and requested by IVGID.

16 21. On November 30, 2016, GSGI provided notice to IVGID of its intention to
17 terminate said Agreement.

18 22. On December 1, 2016, IVGID provided GSGI a list of matters pertaining to
19 termination of the above referenced Agreement, requesting GSGI to: 1) refund fees
20 advanced for the remainder of the Contract service term; and 2) deliver both an electronic
21 and paper copy of the database along with all other Customer Data in the possession and
22 control of GSGI.

23 23. GSGI has refunded the fees advanced for the remainder of the Contract
24 service term, however, GSGI has refused and continues to refuse to turn over said Customer
25 Data to IVGID.



Reese Klink,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 24. On February 8, 2017, GSGI sent an invitation to participate in FlashVote
2 services on behalf of the Truckee Meadows Regional Planning Agency, using the IVGID
3 Customer Data prepared on behalf of IVGID to distribute such invitation.

4 25. On April 10, 2017, GSGI sent an invitation to participate in FlashVote
5 services, stating: "This survey was sent on behalf of IVGID Trustee Matthew Dent to the
6 FlashVote community for IVGID, NV." The invitation stated the "Incline Village General
7 Improvement District and FlashVote thank you for your input!"

8 26. The April 10, 2017 FlashVote invitation was sent using the IVGID Customer
9 Data prepared on behalf of IVGID, and without approval from IVGD.

10 27. GSGI has been, and is now using the Customer Data prepared on behalf of
11 IVGID for other customers, in violation of the Agreement.

12 **III. CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 **Declaratory Relief**
15 **(Against all Defendants)**

16 28. Plaintiff repeats and incorporates all preceding allegations.

17 29. GSGI created a customer database, based on information provided by IVGID
18 to its customers, requesting they sign up for the survey service, and based on the Agreement
19 entered into between IVGID and GSGI.

20 30. Pursuant to the Agreement, the Customer Data is owned by IVGID, and must
21 be returned upon termination of the Agreement.

22 31. GSGI has refused to turn said Customer Data over to IVGID, and continues
23 to use Customer Data for customers other than IVGID.

24 ///
25 ///



1 32. An actual controversy has arisen and now exists between IVGID and GSGI
2 concerning their respective rights, entitlements, obligations, and duties under the
3 Agreement.

4 33. IVGID requests a declaratory judgment determining the parties' rights under
5 the Agreement, and specifically pertaining to ownership of Customer Data.

6 34. Plaintiff has been forced to retain counsel to prosecute this action and is
7 entitled to recovery of reasonable attorneys' fees and costs incurred herein.

8 **SECOND CLAIM FOR RELIEF**

9 **Injunctive Relief**
10 **(Against all Defendants)**

11 35. Plaintiff repeats and incorporates all preceding allegations.

12 36. GSGI is obligated under the Agreement to return all Customer Data
13 developed as part of the Agreement to IVGID, as IVGID is the owner of said Customer
14 Data. GSGI has failed or refused to provide such information to IVGID.

15 37. GSGI continues to use such Customer Data for the benefit of other
16 customers, other than IVGID, in violation of said Agreement.

17 38. The use by GSGI of IVGID's Customer Data, causes IVGID irreparable
18 injury.

19 39. Compensatory damages are inadequate relief for improper use of IVGID's
20 Customer Data.

21 40. IVGID therefore requests that this Court enter a permanent injunction
22 requiring GSGI to turn over all Customer Data developed on behalf of IVGID to IVGID,
23 destroying record of same from GSGI's servers, once said information is transmitted.
24 IVGID request this court enter a mandatory injunction requiring GSGI to cease using said
25 Customer Data, developed on behalf of IVGID, for the benefit of other customers.



Reese Kline,
Quinn & Co.
190 W. Huffaker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WHEREFORE, Plaintiff prays for relief as follows:


- a. For a declaratory judgment determining the parties' rights under the Agreement;
- b. For a permanent injunction requiring GSGI to: 1) turn over all Customer Data developed on behalf of IVGID to IVGID; 2) destroy all records of Customer Data from GSGI's servers, once said information is transmitted; and 3) cease using said Customer Data, developed on behalf of IVGID, for the benefit of other customers.
- c. For attorney's fees and costs; and
- d. For such other and further relief as the Court may deem just and proper.

Affirmation
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in this court does not contain the social security number of any person.

DATED this 10th day of May, 2017.

REESE KINTZ GUINASSO, LLC

By: 

 JASON D. GUINASSO, ESQ. (SBN# 8478)
 Attorney for Plaintiff



Reese Kintz
Guinasso
190 W Fullaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

List of Exhibits
Case No. (Not Yet Assigned)
Incline Village General Improvement District v. Governance Sciences Group, Inc.
COMPLAINT

Exhibit No.	Document	Page Count
Exhibit 1	- Correspondence dated April 6, 2015 and April 17, 2015	2 pages
Exhibit 2	- "FlashVote" Services Agreement	4 pages



Reese Kintz,
Guinasso
190 W Hoffaker Ln
Suite 402
Reno, NV 89511
(775) 852-8746

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



April 6, 2015

Dear Incline Village/Crystal Bay Parcel Owner,

Happy 2015! Your new Board of Trustees and I are looking forward to working with you to make Incline Village and Crystal Bay the best possible place to live and visit. IVGID needs your help to do a better job of serving YOU - our constituents.

Do you have one minute a month to help make IVGID better?

We have partnered with FlashVote (an independent "good government" service) to collect your anonymous input at least once per month, with brief surveys that you can complete in one minute or less. FlashVote ensures that all questions are concise, unbiased and meaningful to citizens. You can make your voice heard by computer, smartphone or phone. You even receive results at the end of each survey period - typically only a few days after a survey starts. Civic responsibility has never been more convenient.

If you are already signed up as a FlashVote beta user, thank you for participating! You don't need to do anything. If you have not already signed up, please take a few minutes now to join over 400 of your friends and neighbors who are already FlashVote users in the IVGID district. Your participation is anonymous to IVGID and your personal data stays private:

- Please go to www.flashvote.com/ivgid
- Complete the sign up process once and you can be heard many times in the future

After you sign up, you can expect FlashVote to email you surveys about IVGID activities starting this month. You will get the immediate satisfaction of having your voice heard by IVGID as we work toward creating better local government for you. IVGID may also offer some optional rewards through FlashVote to thank you for your civic participation. We are excited to launch this new feedback system for you, and look forward to hearing from as many of you as possible. For questions or more information about IVGID, please contact Susan Herron (775-832-1207 or sah@ivgid.org). For questions or more information about FlashVote please contact Kevin Lyons (510-593-4901 or kevin@flashvote.com).



Best regards,

Steve Pinkerton
General Manager

P.S. Please make note of our Summer Appreciation Week during June when some IVGID facilities will be available at no additional charge to picture pass holders. Free Golf will be available Friday, 6/12 to Sunday, 6/14 and free Recreation Center and Tennis Center access will be available from Friday, 6/19 to Sunday, 6/21.

ADMINISTRATIVE OFFICES • 893 SOUTHWOOD BOULEVARD • INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 EX: (775) 832-1122 • WWW.YOURIAHOEPLACE.COM



GENERAL IMPROVEMENT DISTRICT

April 17, 2015

Dear Incline Village/Crystal Bay Parcel Owner,

Happy 2015! Your new Board of Trustees and I are looking forward to working with you to make Incline Village and Crystal Bay the best possible place to live and visit. IVGID needs your help to do a better job of serving YOU - our constituents.

Do you have one minute a month to help make IVGID better?

We have partnered with FlashVote (an independent "good government" service) to collect your anonymous input at least once per month, with brief surveys that you can complete in one minute or less. FlashVote ensures that all questions are concise, unbiased and meaningful to citizens. You can make your voice heard by computer, smartphone or phone. You even receive results at the end of each survey period - typically only a few days after a survey starts. Civic responsibility has never been more convenient.

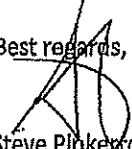
If you are already signed up as a FlashVote beta user, thank you for participating! You don't need to do anything. If you have not already signed up, please take a few minutes now to join over 400 of your friends and neighbors who are already FlashVote users in the IVGID district. Your participation is anonymous to IVGID and your personal data stays private:

- Please go to www.flashvote.com/ivgid
- Complete the sign up process once and you can be heard many times in the future

After you sign up, you can expect FlashVote to email you surveys about IVGID activities starting this month. You will get the immediate satisfaction of having your voice heard by IVGID as we work toward creating better local government for you. IVGID may also offer some optional rewards through FlashVote to thank you for your civic participation. We are excited to launch this new feedback system for you, and look forward to hearing from as many of you as possible. For questions or more information about IVGID, please contact Susan Herron (775-832-1207 or sah@ivgid.org). For questions or more information about FlashVote please contact Kevin Lyons (510-593-4901 or kevin@flashvote.com).



Best regards,


Steve Pinkerton
General Manager

P.S. Please make note of our Summer Appreciation Week during June when some IVGID facilities will be available at no additional charge to picture pass holders. Free Golf will be available Friday, 6/12 to Sunday, 6/14 and free Recreation Center and Tennis Center access will be available from Friday, 6/19 to Sunday, 6/21.

ADMINISTRATIVE OFFICES • 893 SOUTHWOOD BOULEVARD • INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 FX: (775) 832-1122 • WWW.YOURTAHOEPLACE.COM

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2



SAAS SERVICES ORDER FORM

Customer: Incline Village General Improvement District	Contact: Steve Pinkerton
Address: 893 Southwood Boulevard Incline Village, NV 89451	Phone: 775-832-1206 E-Mail: steve.pinkerton@ivgid.org
<p>Services: Governance Sciences Group, Inc ("the Company") will provide the Standard Tier of FlashVote services (the "Service(s)"). This is a program of up to 12 monthly Stock FlashVote Surveys and up to 6 Custom FlashVote Surveys which may be added or substituted.</p> <p>Launch services, additional Custom FlashVote Surveys and other Premium features are available as options for additional and separate fees.</p>	
Services Fees: \$4,900.00 per year, payable in advance, subject to the terms of Section 4 herein.	Initial Service Term: One Year (May 1, 2016 to April 30, 2017)
<p>Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.</p> <p>Implementation Fee (one-time): \$0 (Waived by Company)</p>	

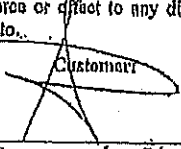
SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this 10th day of May, 2016 (the "Effective Date") between Governance Sciences Group, Inc. with a place of business in Incline Village, Nevada ("Company"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form unless signed by both parties hereto.

Governance Sciences Group, Inc.

Customer

By: _____
 Name: Kavin Lyons
 Title: CEO

By: 
 Name: Steven J. Pinkerton
 Title: General Manager



TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit B.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury, Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, phones, modems, hardware, servers, software, operating systems, networking, web servers and the like

(collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data") such as non-public e-mail addresses or other non-public e-mail data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with implementation Services or support; and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to resolve an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled

emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OR A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES

SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY; (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicenseable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Nevada without regard to its conflict of laws provisions.

1 JASON D. GUINASSO, ESQ. (SBN# 8478)
REESE KINTZ GUINASSO, LLC
2 190 W Huffaker Lane, Suite 402
Reno, Nevada 89511
3 Telephone: (775) 832-6800
Facsimile: (775) 832-6801
4 jguinasso@rkglawyers.com
Attorney for Plaintiff

6 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

9 INCLINE VILLAGE GENERAL
10 IMPROVEMENT DISTRICT, a General
Improvement District,

11 Plaintiff,

12 vs.

13 GOVERNANCE SCIENCES GROUP,
INC., a Delaware Corporation; and DOES
14 1-50 inclusive,

15 Defendant.

Case No.:

Dept. No.:

**MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

16 Plaintiff, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT ("Plaintiff"
17 or "IVGID") moves this Court for issuance of a preliminary injunction according to NRS
18 Chapter 33 and NRCP Rule 65. This Motion is supported by the Complaint filed in this matter,
19 exhibits, affidavit attached hereto, and the Points and Authorities that follow. Further, Plaintiff
20 requests oral argument should this Court find it beneficial to its decision.
21

22 ///

23 ///

24 ///

25 ///



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff is seeking a preliminary injunction to prevent Defendant, GOVERNANCE SCIENCES GROUP, INC. ("GSGI"), from using IVGID's customer data on behalf of GSGI's other customers, without the express authorization from IVGID, and in violation of a Services Agreement, entered May 10, 2016, between GSGI and IVGID. Plaintiff seeks to prevent this improper use of IVGID customer data, until the rights of the parties can be established.

I. STATEMENT OF RELEVANT FACTS

IVGID is a special purpose district organized under Chapter 318 of the Nevada Revised Statutes, and is located on the North Shore of Lake Tahoe.¹ GSGI is, upon information and belief, a Delaware Corporation, registered as a Foreign Corporation with the State of Nevada, with its place of business in Incline Village, Nevada.²

Beginning in 2013, GSGI approached IVGID to beta test its survey platform services, wherein GSGI provided services to allow IVGID to send surveys to its customers, and GSGI would provide analysis of the results of such surveys.³ The purpose of the relationship between GSGI and IVGID was to allow GSGI to develop a platform in which IVGID was able to put forth surveys to its customers, receiving feedback on a range of topics, to allow IVGID to better serve its customers.⁴

///

///

///

¹ See Affidavit of Steven Pinkerton in Support of Plaintiff's Motion for Preliminary Injunctive Relief at ¶ 2, attached as Exhibit 1.

² Exhibit 1 ¶ 3.

³ Exhibit 1 ¶ 4.

⁴ Exhibit 1 ¶ 5.



1 On April 6, 2015 and April 17, 2015, in order to further develop a customer data list
2 to allow GSGI to provide surveys to IVGID's customers, IVGID sent correspondence to its
3 customers, inviting them to sign up for the service, and participate in the program.⁵

4 On May 10, 2016, GSGI entered into a Services Agreement ("Agreement") with
5 IVGID, wherein GSGI agreed to provide continuing standard tier "FlashVote" services and
6 surveys to IVGID.⁶ The Agreement service term commenced on May 1, 2016, and was set to
7 run until April 30, 2017.⁷ The purpose of the Agreement was for GSGI to provide survey
8 services, wherein IVGID would develop questions to pose to its customers, and GSGI would
9 compile a list of IVGID customers on behalf of IVGID through IVGID's request for its
10 customers to sign up for the service, and GSGI would publish an electronic survey to such
11 customers.⁸

12 Section 3.1 of the Agreement defines "Proprietary Information" of IVGID as "non-
13 public data provided by Customer to Company to enable the provision of the Services
14 ("Customer Data") such as non-public citizen email addresses or other non-public data."⁹
15 Section 3.1 of the Agreement also states that GSGI was "(i) to take reasonable precautions to
16 protect such Proprietary Information, and (ii) not to use (except in performance of the Services
17 or as otherwise permitted herein) or divulge to any third person any such Proprietary
18
19
20
21

22 ⁵ A true and correct copy of said April 6, 2015 and April 17, 2015 correspondence is attached hereto at Exhibit 2; see also Exhibit 1 ¶ 6.

23 ⁶ A true and correct copy of the Agreement is attached hereto at Exhibit 3; see also Exhibit 1 ¶ 7.

24 ⁷ Exhibit 3 at page 1.

25 ⁸ Exhibit 1 ¶ 8.

⁹ Exhibit 3 at page 2.



1 Information.”¹⁰ Section 3.2 of the Agreement states that IVGID “shall own all right title and
2 interest in and to the Customer Data.”¹¹

3 GSGI was retained to provide survey services, with the understanding that IVGID was
4 able to control the content of such surveys.¹² On numerous occasions, GSGI attempted to
5 redraft the survey language prepared by IVGID, and presented by IVGID for GSGI to publish
6 within the contracted survey services.¹³

7 On July 28, 2016, GSGI sent a FlashVote survey on behalf of a client other than
8 IVGID, with such survey stating, “This survey was sent on behalf of the Incline Village
9 General Improvement District”, with GSGI using IVGID’s Customer Data, prepared on behalf
10 of IVGID, to distribute such survey.¹⁴

11 On November 30, 2016, GSGI indicated its refusal to provide services and publish
12 survey question language as drafted and requested by IVGID.¹⁵ Also on November 30, 2016,
13 GSGI provided notice to IVGID of its intention to terminate said Agreement.¹⁶

14 On December 1, 2016, IVGID provided GSGI a list of matters pertaining to
15 termination of the above-referenced Agreement, requesting GSGI to: 1) refund fees advanced
16 for the remainder of the Contract service term; and 2) deliver both an electronic and paper
17 copy of the database along with all other Customer Data in the possession and control of
18
19

20 ¹⁰ Exhibit 3 at page 2.

21 ¹¹ Exhibit 3 at page 2.

22 ¹² Exhibit 1 ¶ 9.

23 ¹³ Exhibit 1 ¶ 10.

24 ¹⁴ See FlashVote Survey, dated July 28, 2016, attached at Exhibit 4; see also Exhibit 1 ¶ 11.

25 ¹⁵ See Correspondence from GSGI to IVGID, dated November 30, 2016, attached at Exhibit 5; see also Exhibit
1 ¶ 12. Page 4 of 10

¹⁶ *Id.*



1 GSGI.¹⁷ GSGI has refunded the fees advanced for the remainder of the Contract service term,
2 however, GSGI has refused and continues to refuse to turn over said Customer Data to
3 IVGID.¹⁸

4 On February 8, 2017, GSGI sent an invitation to participate in FlashVote services on
5 behalf of the Truckee Meadows Regional Planning Agency, using the IVGID Customer Data
6 prepared on behalf of IVGID to distribute such invitation.¹⁹

7 On April 10, 2017, GSGI sent an invitation to participate in FlashVote services,
8 stating: "This survey was sent on behalf of IVGID Trustee Matthew Dent to the FlashVote
9 community for IVGID, NV."²⁰ The invitation stated the "Incline Village General
10 Improvement District and FlashVote thank you for your input!"²¹

11 The April 10, 2017 FlashVote invitation was sent using the IVGID Customer Data
12 prepared on behalf of IVGID, and without approval from IVGD.²²

13 ///

14 ///

15 ///

16 ///

17 ///

18

19

20 ¹⁷ See Correspondence from IVGID to GSGI, dated December 1, 2016, attached at Exhibit 6; see also Exhibit
1 ¶ 13.

21 ¹⁸ Exhibit 1 ¶ 14.

22 ¹⁹ See FlashVote Survey, dated February 8, 2017, attached at Exhibit 7; see also Exhibit 1 ¶ 15.

23 ²⁰ See FlashVote Survey, dated April 10, 2017, attached at Exhibit 8; see also Exhibit 1 ¶ 16.

24 ²¹ *Id.*

25 ²² *Id.*



1 II. LEGAL ARGUMENT

2 A. Preliminary Injunction

3 A Preliminary Injunction may issue after notice to the adverse party. NRS 33.010
4 provides general guidelines for when injunctive relief is available, and states that an injunction
5 may be granted in the following cases:

- 6 1. When it shall appear by the complaint that the plaintiff is entitled
7 to the relief demanded, and such relief or any part thereof consists
8 in restraining the commission or continuance of the act complained
9 of, either for a limited period or perpetually.
10 2. When it shall appear by the complaint or affidavit that the
11 commission or continuance of some act, during the litigation, would
12 produce great or irreparable injury to the plaintiff.
13 3. When it shall appear, during the litigation, that the defendant is
14 doing or threatens, or is about to do, or is procuring or suffering to
15 be done, some act in violation of the plaintiff's rights respecting the
16 subject of the action, and tending to render the judgment ineffectual.

17 A preliminary injunction is also available "if an applicant can show a likelihood of
18 success on the merits and a reasonable probability that the non-moving party's conduct, if
19 allowed to continue, will cause irreparable harm for which compensatory damage is an
20 inadequate remedy."²³ The Court's decision to grant a preliminary injunction "is within the
21 sound discretion of the district court, whose decision will not be disturbed on appeal absent
22 an abuse of discretion."²⁴

23 This case involves the Plaintiff's rights to customer data pursuant to said attached
24 Agreement, with the data compiled by GSGI on behalf of Plaintiff. After termination of the
25 Agreement, and in violation of the terms thereof, GSGI continues to use the proprietary
customer data of Plaintiff on behalf of other clients, without the permission of Plaintiff. The



²³ Dangberg Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Comm'rs, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). Page 6 of 10

²⁴ *Id.*

1 Agreement expressly restricts GSGI from divulging to any third person this proprietary
2 information, which is owned by IVGID.²⁵

3 IVGID has a right and obligation to protect the information of its constituents, and to
4 take action to stop others from distributing information in its name, or the name of its
5 constituents, when such distribution is not authorized by IVGID. Allowing GSGI to continue
6 to use this data in violation of the Agreement puts Plaintiff at risk of irreparable injury,
7 opening Plaintiff up to potential liabilities for GSGI's claim to be providing information on
8 behalf of IVGID, without Plaintiff's permission, and distributing information to IVGID
9 constituents, not sanctioned by IVGID. The fact that GSGI is clearly using data owned by
10 IVGID, and without the express permission of IVGID, demonstrates IVGID's likelihood of
11 success on the merits of its claim, being the ownership of such data as provided by the
12 Agreement, as well as supports Plaintiff's assertion that it will suffer irreparable injury if the
13 Defendant is not enjoined to stop the use of Plaintiff's customer data.

14 NRS 33.010 (1), in pertinent part, holds that an injunction must issue:

15 When it shall appear by the complaint that the plaintiff is
16 entitled to the relief demanded, and such relief or any part
17 thereof consists in restraining the commission ... of the act
complained of, either for a limited period or perpetually.

18 Plaintiff is seeking to restrain the commission of an act, being use of proprietary data.
19 Permitting unauthorized use of Plaintiff's proprietary data will cause Plaintiff irreparable
20 harm, and such action is in violation of Plaintiff's rights.

21 Plaintiff is requesting the actions by Defendant be enjoined until the various rights and
22 interests are clarified and legally established. Compensatory damages may be due should
23 Defendant's actions be allowed; however, money is not sufficient to compensate Plaintiff for



²⁵ Exhibit 3 at page 2.

1 its loss during litigation, allowing Defendant to continue to use IVGID's customer data,
2 without IVGID's approval.

3 **B. Security**

4 The Nevada Rules of Civil Procedure 65(c) provides as follows:

5 No restraining order or preliminary injunction shall issue except
6 upon the giving of security by the applicant, in such sum as the court
7 deems proper, for the payment of such costs and damages as may be
8 incurred or suffered by any party who is found to have been
9 wrongfully enjoined or restrained. **No such security shall be
10 required of the State or of an officer or agency thereof.**
11 (Emphasis added)

12 The proper amount of security that should be required in this case is *de minimus*.
13 However, as Plaintiff is a special purpose district organized under Chapter 318 of the Nevada
14 Revised Statutes, it is exempt from posting a bond.

15 **III. CONCLUSION**

16 Plaintiffs have proven that they are entitled to a preliminary injunction because they
17 are likely to succeed on the merits of the claim, seeking a declaratory judgment on the issue
18 of ownership of proprietary information, which is clearly stated in the Agreement entered
19 between the parties.
20
21
22
23
24
25

///

///

///

///

///

///

///

///

///



teese Kintz,
Julinasso
90 W Huffaker Ln
Julio 402
Ceno, NY 89511
775) 853-8746

1 For the same reasons, Plaintiff now seeks a preliminary injunction, Plaintiff also seeks
2 permanent injunctive relief. At this stage, Plaintiff seeks to retain the status quo while the
3 rights of the parties are established, to keep Defendant from using such data it compiled on
4 behalf of IVGID for other customers, directly harming IVGID.

5 **Affirmation**
6 **(Pursuant to NRS 239B.030)**

7 The undersigned does hereby affirm that the preceding document filed in this court
8 does not contain the social security number of any person.

9 DATED this 10th day of May 2017. REESE KINTZ GUINASSO, LLC

10 By: 
11 JASON H. GUINASSO, ESQ. (SBN# 8478)
12 *Attorney for Plaintiff*



13
14
15
16
17
18
19
20
21
22
23
24
25
Reese Kintz,
Guinasso
90 W Huffaker Ln
Suite 402
Leno, NV 89511
775) 857-8746

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

List of Exhibits
Case No. (Not Yet Assigned)
Incline Village General Improvement District v. Governance Sciences Group, Inc.
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

Exhibit No.	Document	Page Count
Exhibit 1	- Affidavit of Steven Pinkerton	4 pages
Exhibit 2	- April 6, 2015 and April 17, 2015 Correspondence	2 pages
Exhibit 3	- "FlashVote" Services Agreement	4 pages
Exhibit 4	- FlashVote Survey, dated July 28, 2016	1 page
Exhibit 5	- Correspondence from GSGI to IVGID, dated November 30, 2016	1 page
Exhibit 6	- Correspondence from IVGID to GSGI dated December 1, 2016	2 pages
Exhibit 7	- FlashVote Survey, dated February 8, 2017	1 page
Exhibit 8	- FlashVote Survey, dated April 10, 2017	1 page



EXHIBIT 1

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT 1

1 AFFIDAVIT OF STEVEN PINKERTON IN SUPPORT OF PLAINTIFF'S MOTION

2 FOR PRELIMINARY INJUNCTIVE RELIEF

3 STATE OF NEVADA)
) ss.
4 COUNTY OF WASHOE)

5 Steven Pinkerton, Affiant herein, after first being duly sworn under oath, and under
6 penalty of perjury, deposes and says:

7 1. I am the General Manager of the Incline Village General Improvement District
8 ("IVGID"), and familiar with the subject matter of IVGID's Motion for Preliminary
9 Injunctive Relief ("Motion").

10 2. IVGID is a special purpose district organized under Chapter 318 of the Nevada
11 Revised Statutes, and is located on the North Shore of Lake Tahoe.

12 3. GSGI is, upon my information and belief, a Delaware Corporation, registered as a
13 Foreign Corporation with the State of Nevada, with its place of business in Incline
14 Village, Nevada.

15 4. Beginning in 2013, GSGI approached IVGID to beta test its survey platform
16 services, wherein GSGI provided services to allow IVGID to send surveys to its
17 customers, and GSGI would provide analysis of the results of such surveys.

18 5. The purpose of the relationship between GSGI and IVGID was to allow GSGI to
19 develop a platform in which IVGID was able to put forth surveys to its customers,
20 receiving feedback on a range of topics, to allow IVGID to better serve its
21 customers.

22 6. On April 6, 2015 and April 17, 2015, in order to further develop a customer data list
23 to allow GSGI to provide surveys to IVGID's customers, IVGID sent
24 correspondence to its customers, inviting them to sign up for the service, and
25



1 participate in the program. A true and correct copy of such correspondence is
2 attached to the Motion at Exhibit 2.

3 7. On May 10, 2016, GSGI entered into a Services Agreement ("Agreement") with
4 IVGID, wherein GSGI agreed to provide continuing standard tier "FlashVote"
5 services and surveys to IVGID. A true copy of said Agreement is attached to the
6 Motion at Exhibit 3.

7 8. The purpose of the Agreement was for GSGI to provide survey services, wherein
8 IVGID would develop questions to pose to its customers, and GSGI would compile a
9 list of IVGID customers on behalf of IVGID through IVGID's request for its
10 customers to sign up for the service, and GSGI would publish an electronic survey to
11 such customers.

12 9. GSGI was retained by IVGID to provide survey services, with the understanding that
13 IVGID was able to control the content of such surveys.

14 10. On numerous occasions, GSGI attempted to redraft the survey language prepared by
15 IVGID, and presented by IVGID for GSGI to publish within the contracted survey
16 services.

17 11. On July 28, 2016, GSGI sent a FlashVote survey on behalf of a client other than
18 IVGID, with such survey stating "This survey was sent on behalf of the Incline
19 Village General Improvement District", with GSGI using IVGID's Customer Data,
20 prepared on behalf of IVGID, to distribute such survey. A true and correct copy of
21 the July 28, 2016 FlashVote survey, is attached to the Motion at Exhibit 4.

22 12. On November 30, 2016, GSGI indicated its refusal to provide services and publish
23 survey question language as drafted and requested by IVGID. Also on November 30,
24 2016, GSGI provided notice to IVGID of its intention to terminate said Agreement.
25



Reese Kintz,
Gulinasso
190 W. Huffer Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 A true and correct copy of such November 30, 2016 Correspondence, is attached to
2 the Motion at Exhibit 5.

3 13. On December 1, 2016, IVGID provided GSGI a list of matters pertaining to
4 termination of the above referenced Agreement, requesting GSGI to: 1) refund fees
5 advanced for the remainder of the Contract service term; and 2) deliver both an
6 electronic and paper copy of the database along with all other Customer Data in the
7 possession and control of GSGI. A true and correct copy of such November 30, 2016
8 Correspondence, is attached to the Motion at Exhibit 6.

9 14. GSGI has refunded the fees advanced for the remainder of the Contract service term,
10 however, GSGI has refused and continues to refuse to turn over said Customer Data
11 to IVGID.

12 15. On February 8, 2017, GSGI sent an invitation to participate in FlashVote services on
13 behalf of the Truckee Meadows Regional Planning Agency, using the IVGID
14 Customer Data prepared on behalf of IVGID to distribute such invitation. A true and
15 correct copy of the February 8, 2017 FlashVote survey, is attached to the Motion at
16 Exhibit 7.

17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///


Reese Kiniz,
Giulasso
190 W Huffaker Ln
Suite 402
Reno, NY 89511
(775) 853-8746

1 16. On April 10, 2017, GSGI sent an invitation to participate in FlashVote services,
2 stating: "This survey was sent on behalf of IVGID Trustee Matthew Dent to the
3 FlashVote community for IVGID, NV." A true and correct copy of the April 10,
4 2017 FlashVote survey, is attached to the Motion at Exhibit 8. The invitation stated
5 the "Incline Village General Improvement District and FlashVote thank you for your
6 input!" The April 10, 2017 FlashVote invitation was sent using the IVGID Customer
7 Data prepared on behalf of IVGID, and without approval from IVGD.

8
9 FURTHER AFFIANT SAYETH NAUGHT.

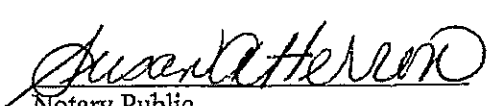
10 Dated this 10th day of May, 2017.

11
12 
13 Steven Pinkerton

14 SUBSCRIBED AND SWORN TO before me

15 this 10th day of May, 2017.



18 
19 Notary Public
20
21
22



24 Reero Kintz,
Quinasso
100 W HuMaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746
25

EXHIBIT 2

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT 2



**INCLINE
VILLAGE**

GENERAL IMPROVEMENT DISTRICT

April 6, 2015

Dear Incline Village/Crystal Bay Parcel Owner,

Happy 2015! Your new Board of Trustees and I are looking forward to working with you to make Incline Village and Crystal Bay the best possible place to live and visit. IVGID needs your help to do a better job of serving YOU - our constituents.

Do you have one minute a month to help make IVGID better?

We have partnered with FlashVote (an independent "good government" service) to collect your anonymous input at least once per month, with brief surveys that you can complete in one minute or less. FlashVote ensures that all questions are concise, unbiased and meaningful to citizens. You can make your voice heard by computer, smartphone or phone. You even receive results at the end of each survey period - typically only a few days after a survey starts. Civic responsibility has never been more convenient.

If you are already signed up as a FlashVote beta user, thank you for participating! You don't need to do anything. If you have not already signed up, please take a few minutes now to join over 400 of your friends and neighbors who are already FlashVote users in the IVGID district. Your participation is anonymous to IVGID and your personal data stays private:

- Please go to www.flashvote.com/ivgid
- Complete the sign up process once and you can be heard many times in the future

After you sign up, you can expect FlashVote to email you surveys about IVGID activities starting this month. You will get the immediate satisfaction of having your voice heard by IVGID as we work toward creating better local government for you. IVGID may also offer some optional rewards through FlashVote to thank you for your civic participation. We are excited to launch this new feedback system for you, and look forward to hearing from as many of you as possible. For questions or more information about IVGID, please contact Susan Herron (775-832-1207 or sah@ivgid.org). For questions or more information about FlashVote please contact Kevin Lyons (510-593-4901 or kevin@flashvote.com).



Best regards,

Steve Pinkerton
General Manager

P.S. Please make note of our Summer Appreciation Week during June when some IVGID facilities will be available at no additional charge to picture pass holders. Free Golf will be available Friday, 6/12 to Sunday, 6/14 and free Recreation Center and Tennis Center access will be available from Friday, 6/19 to Sunday, 6/21.

ADMINISTRATIVE OFFICES • 893 SOUTHWOOD BOULEVARD • INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 FX: (775) 832-1122 • WWW.YOURTAHOEPLACE.COM



GENERAL IMPROVEMENT DISTRICT

April 17, 2015

Dear Incline Village/Crystal Bay Parcel Owner,

Happy 2015! Your new Board of Trustees and I are looking forward to working with you to make Incline Village and Crystal Bay the best possible place to live and visit. IVGID needs your help to do a better job of serving YOU - our constituents.

Do you have one minute a month to help make IVGID better?

We have partnered with FlashVote (an independent "good government" service) to collect your anonymous input at least once per month, with brief surveys that you can complete in one minute or less. FlashVote ensures that all questions are concise, unbiased and meaningful to citizens. You can make your voice heard by computer, smartphone or phone. You even receive results at the end of each survey period -- typically only a few days after a survey starts. Civic responsibility has never been more convenient.

If you are already signed up as a FlashVote beta user, thank you for participating! You don't need to do anything. If you have not already signed up, please take a few minutes now to join over 400 of your friends and neighbors who are already FlashVote users in the IVGID district. Your participation is anonymous to IVGID and your personal data stays private:

- Please go to www.flashvote.com/ivgid
- Complete the sign up process once and you can be heard many times in the future

After you sign up, you can expect FlashVote to email you surveys about IVGID activities starting this month. You will get the immediate satisfaction of having your voice heard by IVGID as we work toward creating better local government for you. IVGID may also offer some optional rewards through FlashVote to thank you for your civic participation. We are excited to launch this new feedback system for you, and look forward to hearing from as many of you as possible. For questions or more information about IVGID, please contact Susan Herron (775-832-1207 or sah@ivgid.org). For questions or more information about FlashVote please contact Kevin Lyons (510-593-4901 or kevin@flashvote.com).

Best regards,


Steve Pinkerton
General Manager

P.S. Please make note of our **Summer Appreciation Week** during June when some IVGID facilities will be available at no additional charge to picture pass holders. Free Golf will be available Friday, 6/12 to Sunday, 6/14 and free Recreation Center and Tennis Center access will be available from Friday, 6/19 to Sunday, 6/21.

ADMINISTRATIVE OFFICES • 893 SOUTHWOOD BOULEVARD • INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 FX: (775) 832-1122 • WWW.YOURTAHOEPLACE.COM



EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3



SAAS SERVICES ORDER FORM

Customer: Incline Village General Improvement District	Contact: Steve Pinkerton
Address: 893 Southwood Boulevard	Phone: 775-832-1206
Incline Village, NV 89451	E-Mail: steve_pinkerton@ivgid.org
<p>Services: Governance Sciences Group, Inc ("the Company") will provide the Standard Tier of FlashVote services (the "Service(s)"). This is a program of up to 12 monthly Stock FlashVote Surveys and up to 6 Custom FlashVote Surveys which may be added or substituted.</p> <p>Launch services, additional Custom FlashVote Surveys and other Premium features are available as options for additional and separate fees.</p>	
Services Fees: \$4,900.00 per year, payable in advance, subject to the terms of Section 4 herein.	Initial Service Term: One Year (May 1, 2016 to April 30, 2017)
<p>Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.</p> <p>Implementation Fee (one-time): \$0 (Waived by Company)</p>	

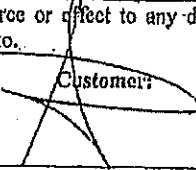
SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this 10th day of May, 2016 (the "Effective Date") between Governance Sciences Group, Inc. with a place of business in Incline Village, Nevada ("Company"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form unless signed by both parties hereto.

Governance Sciences Group, Inc.:

Customer:

By: _____
 Name: Kevin Lyons
 Title: CEO

By: 
 Name: Steven J. Pinkerton
 Title: General Manager



TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit B.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, phones, modems, hardware, servers, software, operating systems, networking, web servers and the like

(collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data") such as non-public citizen email addresses or other non-public citizen data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled

emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES

SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY; (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicenseable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Nevada without regard to its conflict of laws provisions.

EXHIBIT 4

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

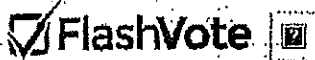
EXHIBIT 4

From: FlashVote <surveys@flashvote.com>

Date: July 28, 2016 at 3:24:24 PM PDT

To: mistybray33@yahoo.com

Subject: New FlashSurvey for IVGID - Recent Changes to Your Garbage and Recycling Service



THIS IS NOT FROM ANY GOVERNMENT AGENCY.

This survey was sent on behalf of the Incline Village
General Improvement District community members.

You have received a new FlashSurvey for Incline Village General Improvement District!

Recent Changes to Your Garbage and Recycling Service

<image001.png> **VOTE NOW**

Note: This link will log you into your account one time only.

This survey is scheduled to end in about 24 hours at Jul 29, 2016 3:08pm PDT.

FlashSurveys help provide your community leaders with the input they need to make the best decisions possible.
Make your voice heard! Make your opinion count! Vote now!

Incline Village General Improvement District and FlashVote thank you for your input!

To opt-out of receiving any further contact from FlashVote, click [here](#).

VOTE NOW

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 5

On Nov 30, 2016, at 3:10 PM, Kevin Lyons <kevin@flashvote.com> wrote:

Hi Jason et. al.-

I'm afraid we've already been through this recently with you guys so you know how our quality control works. If IVGID wants to send crappy surveys (or worse), including previously rejected questions like they did recently with surveygizmo, that's up to IVGID. But we can't and don't do that -- its the core of our value proposition to citizens and governments. We keep citizens involved better than any other approach by ensuring high-quality surveys that meet 23 points of quality control. No other government has ever had the slightest problem or hiccup with this process. In fact they all deeply desire and appreciate it. IVGID management has now generated a problem for us twice in the last 6 months as the lone problem child.

So I'm sorry to have to do this, but we just had our dally company meeting and unanimously decided we can no longer continue working with IVGID after the present intransigence and the perceived risks and hassles of continuing in this way. We would be happy to consider other workable alternatives in the future, but we will be promptly and happily refunding the remainder of the contract value at this point.

Thanks again for the opportunity to work with everyone that wants to make IVGID better and sorry we have to move on, but it is what it is.

Best,
-Kevin

PS: I've very much enjoyed working directly with you Misty. If you do want us to send out the latest quality controlled version of the survey from last night, we will be happy to do so at no charge. And don't hesitate to call or email if we can be helpful in any other way.

PPS: And for the record, I chuckled involuntarily when I read Jason's commentary on my "lay" opinions. We all know that IVGID "legal" opinions are dictated by IVGID management without the best interests of the public in mind or quality control by counsel, just as in this instance. That was the first amusing thing. The second was that my "not competent" opinions happen to be those of a disinterested law and governance expert who 1) once trained to be a law professor at a top university with a full fellowship, 2) has earned the respect of the finest corporate, constitutional, academic and municipal lawyers in the country, 3) has used his contract reading skills to piece together several successful fraud cases up to 9 digits, 4) has used his ordinance reading skills to convince several top state officials to change Nevada law, 5) has used his litigation skills to win a Motion for Reconsideration as a pro per litigant, and even 6) just taught a Continuing Legal Education class to the leading municipal law firm in California. You would not have known most of these highlights, but I imagine you can see why I'm quite happy to put my reputation and opinions up against anything that comes out of IVGID given the circumstances. Anytime, anywhere and on any topic. In fact this just gave me another interesting idea... but now its back to work after too much (more) time wasted.

EXHIBIT 6

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT 6

From: Jason Guinasso [<mailto:JGuinasso@rkglawyers.com>]
Sent: Thursday, December 1, 2016 9:55 AM
To: Kevin Lyons
Cc: Moga, Misty A.; Steve J. Pinkerton
Subject: Re: Flashvote Ordinance 1

Kevin -

I have received and acknowledge your notice to terminate Governance Sciences Group, Inc.'s ("GSGI") Contract with IVGID. As you admit in your e-mail correspondence, GSGI is required to refund fees advanced for remainder of the Contract service term within thirty (30) days of notice of termination.

Please be advised that, in accordance with Section 3.2 of the Contract, IVGID owns the rights to "Customer Data," including but not limited to the data base used for FlashVote Surveys. Please deliver both an electronic and paper copy of the data base along with all other Customer Data in the possession and control of GSGI within thirty (30) days.

Please be further advised that GSGI is prohibited from using IVGID's logo or data base for any purpose. Any unauthorized use of IVGID's logo or data base will result in immediate legal action.

Finally, IVGID will advise the Board of Trustees of GSGI's decision at its next regularly scheduled meeting and will take all necessary steps to make sure the public understands that IVGID will no longer be using GSGI's services and the "FlashVote" product.

Jason D. Guinasso, Esq.
Shareholder
Reese Kintz Guinasso, L.L.C. jguinasso@rkglawyers.com
www.rkglawyers.com

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301
Incline Village, Nevada 89451
p. 775.832.6800

190 W. Huffaker Lane, Suite 402
Reno, Nevada 89511
p. 775.853.8746

2300 W. Sahara Ave., Suite 800
Las Vegas, NV 89102
p. 702-856-4333

EXHIBIT 7

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT 7

From: FlashVote <admin@flashvote.com>

Subject: You have been added to the Truckee Meadows Regional Planning Agency community at FlashVote

Date: February 8, 2017 at 4:06:53 PM PST

To: gulnasso@mac.com



**You have been added to the Truckee Meadows Regional Planning Agency,
NV Community**

A FlashVote community has been established for Truckee Meadows Regional Planning Agency, NV, or the existing community modified its geographic limits. Because you have an address registered inside this community's geographic boundary, you have been automatically added as a member.

If you don't want to participate in the Truckee Meadows Regional Planning Agency, NV community, you can remove your subscription at any time by visiting your [My Communities](#) page and removing the community.

You can also [visit the FlashVote site](#), log in, and start completing available Civic Tasks for this new community whenever you like.

VISIT FLASHVOTE

VISIT FLASHVOTE

Thanks again for participating and welcome aboard!
The FlashVote Team

To opt-out of receiving any further contact from FlashVote, [click here](#).

EXHIBIT 8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT 8

From: FlashVote (IVGID, NV) <surveys@flashvote.com>
Date: Mon, Apr 10, 2017 at 2:54 PM
Subject: New FlashSurvey for IVGID, NV - IVGID Priorities
To: kendrawong@gmail.com



DENT

This survey was sent on behalf of IVGID Trustee
Matthew Dent to the FlashVote community for
IVGID, NV.

You have received a new FlashSurvey for the Incline Village General Improvement District
community!

IVGID Priorities

VOTE NOW

Note: This link will log you into your account one time only.

This survey is scheduled to end in 2 days at Apr 12, 2017 2:51pm PDT.

FlashSurveys help provide your community leaders with the input they need to make the best
decisions possible.

Make your voice heard! Make your opinion count! Vote now!

Incline Village General Improvement District and FlashVote thank you for your input!

To opt-out of receiving any further contact from FlashVote, click [here](#).

EXHIBIT B

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT, a General
Improvement District,

Plaintiff,

Case No. CV17-00922

Dept. No. 1

vs.

GOVERNANCE SCIENCES GROUP, INC., a
Delaware Corporation,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND
DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REQUEST FOR
SUBMISSION OF MOTION TO DISMISS**

On June 23, 2017, Defendant, GOVERNANCE SCIENCES GROUP, INC., by and through counsel, Richard McGuffin, Esq., filed its Motion to Dismiss. Plaintiff, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, by and through counsel, Jason Guinasso, Esq. and Ryan Herrick, Esq., filed an Opposition to the Motion to Dismiss on July 18, 2017, subsequently Defendant replied and submitted the matter for the Court's consideration on July 21, 2017. The matter came before the Court for hearing on August 9, 2017.

1 Having considered the papers and pleadings on file, arguments by counsel and the
2 record in its entirety, the Court DENIES Defendant's Motion to Dismiss. Further, in
3 consideration of the ruling on the Motion to Dismiss, this Court renders Plaintiff's Motion to
4 Strike Defendant's Request for Submission of Motion to Dismiss as moot and therefore
5 DENIES Plaintiff's Motion to Strike Defendant's Request for Submission of Motion to
6 Dismiss.
7

8 IT IS SO ORDERED.

9 DATED this 10th day of August, 2017.

10
11 

12 A. WILLIAM MAUPIN
13 Senior Justice
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 10 day of August, 2017, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

VIA ECF

RICHARD MCGUFFIN, ESQ.

JASON GUINASSO, ESQ./RYAN HERRICK, ESQ.

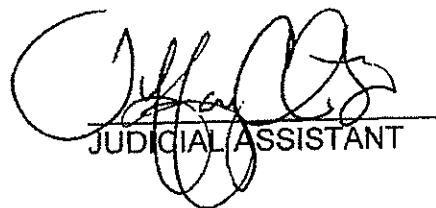

JUDICIAL ASSISTANT

EXHIBIT C

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

**INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT, a General
Improvement District,**

Plaintiff/Counter-Defendant,

v.

**GOVERNANCE SCIENCES GROUP,
INC., a Delaware Corporation; and DOES
1-50 inclusive,**

Defendant/Counter-Claimant.

Case No.: CV17-00922

Dept. No.: 1

**ORDER AFTER HEARING RE: PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

Currently before this Court is Incline Village General Improvement District's ("Plaintiff" or "IVGID") *Motion for Preliminary Injunctive Relief* ("Motion") filed May 12, 2017. Governance Sciences Group, Inc. ("Defendant" or "GSGI") filed the *Opposition* to the Motion on June 23, 2017. IVGID filed the *Reply* on July 5, 2017. The matter was submitted to the Court for consideration on July 5, 2017. On July 6, 2017, this Court issued an *Order to Set* the matter for oral arguments.

On December 6, 2017, the parties appeared before this Court for a hearing on the Motion. Plaintiff IVGID was represented by Devon Reese, Esq. and Defendant GSGI was represented by Richard McGuffin, Esq. This Court took the Motion under advisement, which is now before this

1 Court for a decision. Having considered the pleadings, parties' arguments and relevant law, this
2 Court grants IVGID's request for a preliminary injunction.

3 **I. Relevant Factual and Procedural History**

4 This matter arises out a *Complaint* filed on May 12, 2017 by Plaintiff against GSGI, alleging
5 claims for declaratory and injunctive relief. IVGID is a special purpose district under Chapter 18.
6 GSGI is a Delaware Corporation and its place of business is Incline Village, Nevada. *Mot.* at Ex. 1,
7 *Aff. of Steven Pinkerton, General Manager IVGID.*

8
9 GSGI owns the FlashVote survey service. *Decl. of Kevin Lyons*, Jun. 23, 2017 at 2.
10 FlashVote sends surveys to registered FlashVote users who sign up to take short surveys on issues
11 relevant to their communities. *Opp.* at 2:8. People sign up to join FlashVote by going to
12 www.flashvote.com and submitting personal information to the FlashVote database. *Opp.* at 2:12-13.
13 When people sign up to join FlashVote, they voluntarily provide personal data such as their name,
14 age, gender, as well as contact data such as their email address, a phone number for texts, and a
15 phone number for voice calls. *Opp.* at 2:15-16. This data is submitted to and stored in the FlashVote
16 database. *Opp.* at 2:17-18.
17

18
19 In 2013, GSGI approached IVGID to beta test its survey platform services, whereby GSGI
20 would provide services to allow IVGID to send surveys to its customers and GSGI would provide an
21 analysis of those surveys so IVGID could better serve its customers. *Mot.* at Ex. 1:15-20.

22 On March 27, 2015, a "Memorandum of Understanding between Kevin Lyons and IVGID"
23 was executed by the parties, in which they agreed that, among other things, FlashVote would
24 continue to waive its fee for surveys if IVGID aggressively promoted FlashVote to its known parcel
25 owners/residents ("IVGID customers" or "customers") and sent letters at IVGID's expense asking
26 the customers to sign up with FlashVote. *Opp.* at Ex. 2.
27
28

1 On April 6, 2015 and April 17, 2015, in accordance with the Memorandum of
2 Understanding, IVGID sent correspondence to its customers, which was draft by GSGI's Mr. Lyons,
3 announcing that it had "partnered with FlashVote" to collect customer information, inviting
4 customers to sign up and participate in the program, and stating that "FlashVote ensures that all
5 questions are concise, unbiased and meaningful to its citizens." *Mot.* at Ex. 1, 1:22-24, 2:1-2, Ex. 2;
6 *Opp.* at Ex 2 at 3. Certain recipients of the April 2015 IVGID letters signed up with FlashVote and
7 provided personal data including email addresses and telephone numbers for texts and voice calls.
8 *Decl. of Kevin Lyons* at 2:13-14. Between March 27, 2015 and May 10, 2016, the database of
9 registered FlashVote users increased from 400 to 1000 users. *Decl. of Kevin Lyons* at 2:18-19.

10
11 Thereafter, on May 10, 2016, GSGI entered into a Services Agreement ("Agreement") with
12 IVGID, "wherein GSGI agreed to provide continuing standard tier 'FlashVote' services and surveys
13 to IVGID." *Mot.* at 3:4-6; Ex. 3. The surveys that were issued to IVGID residents pursuant to the
14 Agreement included questions related to beach parking (June 1, 2016) and recent changes to garbage
15 and recycling service (July 28, 2016). *Supp. Decl. of Kevin Lyons*, Dec. 18, 2017, Ex. 5 and 6.
16
17 Thereafter, in late 2016, the relationship between the parties deteriorated and GSGI terminated the
18 Agreement. *Mot.* at Ex. 1, 2:7-24; see also, *Decl. of Kevin Lyons* at 2:22-24.

19
20 GSGI sent FlashVote surveys on behalf of third parties using IVGID's customers' FlashVote
21 data, stating, "This survey was sent on behalf of the Incline Village General Improvement District"
22 even though they were not. *Mot.* at 4:7-10. GSGI, using IVGID's customers' FlashVote data, has
23 also sent surveys on behalf of other entities such as the Truckee Meadows Regional Planning
24 Agency and on behalf of private individuals. *Mot.* at Ex. 1:17-21; Ex. 4, 7. GSGI has been
25 compensated for doing so. *Hearing Transcript* at 62, Dec. 6, 2017.
26
27
28

1 As recently as November 13, 2017, GSGI issued a survey entitled "Accountability for IVGID
2 Misconduct," that included a narrative which stated, among other things, that the IVGID General
3 Manager and District Counsel "conspired with certain board members to inappropriately delay,
4 remove and block the agenda item across all subsequent meeting opportunities (to date), in violation
5 of board policy and open meeting law." *Supp. Decl. of Kevin Lyons*, Ex. 12. The survey that
6 followed the narrative, which was distributed to the IVGID members, read as follows:
7

8 If IVGID's General Manager committed or directed the commission of a crime
9 such as concealment of public records (felony), making a false or misleading
10 public statement (gross misdemeanor) or unauthorized expenditure of public
11 money (misdemeanor), what do you think would be the most appropriate
12 response by the IVGID Board of Trustees?

- 13 • Terminate the GM and notify law enforcement
- 14 • Suspend the GM without pay and launch an investigation
- 15 • Suspend the GM with pay and launch an investigation
- 16 • Do nothing
- 17 • Give the GM a raise
- 18 • Not Sure

19 *Supp. Decl. of Kevin Lyons*, Ex. 12.

20 In response to this and other similar survey questions, IVGID customers' comments included
21 the following:

- 22 • "This needs to be investigated and prosecuted."
 - 23 • "I can't believe there hasn't been an investigation and arrest already, its
24 [sic] been 3 months. Lock those scumbags up."
 - 25 • "Fire them."
 - 26 • "Throw the Thugs out of there."
- 27 *Supp. Decl. of Kevin Lyons*, Ex. 12.

28 ///

///

///

///

1 **II. Applicable Legal Authority**

2 NRS 33.010 provides that an injunction may be granted in the following cases:

- 3 1. When it shall appear by the complaint that the plaintiff is entitled to the relief
4 demanded, and such relief or any part thereof consists in restraining the
5 commission or continuance of the act complained of, either for a limited period
6 or perpetually.
7 2. When it shall appear by the complaint or affidavit that the commission or
8 continuance of some act, during the litigation, would produce great or irreparable
9 injury to the plaintiff.
10 3. When it shall appear, during the litigation, that the defendant is doing or
11 threatens, or is about to do, or is procuring or suffering to be done, some act in
12 violation of the plaintiff's rights respecting the subject of the action, and tending
13 to render the judgment ineffectual.

14 NRCP 65 recognizes three kinds of injunctive orders: (1) temporary restraining orders, (2)
15 preliminary injunctions, and (3) permanent injunctions. Generally a preliminary injunction grants
16 injunctive relief for a limited time until there is a decision on the merits. See NRCP 65. A
17 preliminary injunction is available if an applicant can show a likelihood of success on the merits and
18 a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause
19 irreparable harm for which compensatory damage is an inadequate remedy. Dep't of Conservation &
20 Nat. Res., Div. of Water Res. v. Foley, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). Injunctive relief
21 is extraordinary relief, and the irreparable harm must be articulated in specific terms by the issuing
22 order or be sufficiently apparent elsewhere in the record. Dangberg Holdings v. Douglas Co., 115
23 Nev. 129, 142, 978 P.2d 311, 319 (1999). The purpose of such an order is to preserve the status quo
24 until the case can be decided on its merits. Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029,
25 1030 (1987). The Court's decision to grant a preliminary injunction is within the sound discretion of
26 the court, whose decision will not be disturbed on appeal absent an abuse of discretion. Labor
27 Comm'r of State of Nev. v. Littlefield, 123 Nev. 35, 38, 153 P.3d 26, 28 (2007).

28 ///

1 **III. Discussion**

2 A. Plaintiff IVGID's Argument

3 In the *Motion*, IVGID argues that pursuant to subsection 3.1 of the Agreement, it owns the
4 Customer Data which was developed by IVGID using the April 2015 letters which were sent to its
5 customers. *Mot.* at 3:1-3, 12-17; 7:9-10. IVGID states that GSGI was only able to develop the
6 customer database, i.e., the Customer Data, as a result of IVGID's letters. *Mot.* at 3:1-3. IVGID
7 further relies on the provisions of Section 3.2 of the Agreement to support its ownership of the
8 Customer Data. *Mot.* at 4:1-2.

9 Section 3 of the Agreement, "Confidentiality; Proprietary Rights" defines "Proprietary
10 Information" at subsection 3.1 as "non-public data *provided* by Customer [IVGID] to Company
11 [GSGI] to enable the provision of the Services ("Customer Data") such as non-public citizen email
12 addresses or other non-public data." *Mot.* at Ex. 2. *Emphasis added.* Subsection 3.2 of the
13 Agreement then states that IVGID "shall own all right title and interest in and to the Customer
14 Data." *Mot.* at Ex. 2.

15 IVGID argues that subsequent to the termination of the Agreement, GSGI continued to use
16 IVGID's customer data without IVGID's permission by sending surveys not only to IVGID
17 customers, alleging they were being sent by IVGID, but to IVGID customers on behalf of third party
18 entities such as the Truckee Meadows Regional Planning Agency. *Mot.* at 4:7-10; 5:4-12; 6:19-21.
19 Furthermore, IVGID argues it has an obligation to protect the personal information of its customers,
20 and to stop others from distributing such information in IVGID's name. *Mot.* at 7:3-9. IVGID asserts
21 that it is at risk of irreparable injury, as it is opened up to potential liabilities because GSGI is using
22 IVGID's customer information without IVGID's permission, and distributing information to
23 IVGID's customers. *Mot.* at 7:3-9.
24
25
26
27
28

1 As to irreparable harm, IVGID contends that as a result of the false accusations alleging
2 criminal behavior on behalf of IVGID management and personnel contained in the recent surveys
3 issued by GSGI, IVGID management and personnel are being personally approached and accused by
4 members of the community of committing crimes against the citizens and IVGID, they have become
5 fearful for their safety and there is a resulting loss of confidence in IVGID on behalf of its citizenry,
6 an ongoing level of harassment and fomenting of injury. *Hearing Transcript* at 62-63. IVGID
7 contends that but for the existence of the IVGID customer list, i.e. the Customer Data, GSGI would
8 not be able to circulate its opinions or the opinions of other third parties, which IVGID believes are
9 untrue and are creating safety risks for IVGID personnel and generally ruining its reputation.
10 *Hearing Transcript* at 71.

11
12
13 **B. GSGI's Argument**

14 In the *Opposition*, GSGI contends that that Memorandum of Understanding states that, "The
15 database of registered users belongs to GSG as does the software product."¹ *Opp.* at 3:21-23.
16 Therefore, GSGI argues that the Memorandum of Understanding clearly assigns ownership of the
17 "database of registered users" to GSGI. *Opp.* at 3:21-23. GSGI further states that subsection 3.1 of
18 the Agreement defines "Customer Data" as "non-public data *provided by Customer to Company.*"
19 *Opp.* 7:18-25. *Emphasis added.* GSGI states that if IVGID had provided any Customer Data to
20 GSGI, then IVGID would have ownership of it; however, GSGI argues that IVGID has not
21 "provided" any Customer Data. *Opp.* at 8:8-11. GSGI contends that the Customer Data was provided
22 directly to GSGI by the customers voluntarily using the FlashVote link. *Opp.* at 8:8-11. Further,
23 GSGI argues that pursuant to subsection 3.2 of the Agreement, GSGI owns all data associated with
24 the FlashVote product. *Opp.* at 4:18-25.

25
26
27
28

¹ In the Memorandum of Understanding, GSGI is referred to as GSG.

1 As to irreparable harm, GSGI contends that IVGID cannot establish a single element of NRS
2 33.010 in support of a preliminary injunction as its demands are based on a wholesale
3 misrepresentation of the Agreement. *Opp.* at 7:11-12. GSGI contends that it has done nothing
4 wrong, that IVGID has no rights, owns nothing, provided nothing to its customers and that
5 “Customer Data” as defined in the Agreement does not exist. *Opp.* at 7:11-18. GSGI contends
6 further that the only party that would be harmed by granting an injunction would be GSGI. *Opp.* at
7 7:14-15. GSGI contends that the injury IVGID is complaining of is nothing more than the citizenry
8 speaking out against its government and this does not qualify as injury that will support a finding of
9 irreparable harm. *Hearing Transcript* at 73.

11 C. Court’s Findings

12 1. *Likelihood of Success on the Merits*

13 This Court must first determine the likelihood of Plaintiff’s success on the merits.

14 First, this Court takes issue with GSGI’s assertion that the Memorandum of Understanding
15 clearly assigns ownership of the “database of registered users” to GSGI. The Memorandum of
16 Understanding (executed March 27, 2015) appears to be superseded by the May 10, 2016
17 Agreement. Section 9 of the Agreement, “Miscellaneous” clearly states, “This Agreement is the
18 complete and exclusive statement of the mutual understanding of the parties and supersedes and
19 cancels all previous written and oral agreements, communications and other understandings relating
20 to the subject matter of this Agreement, and all waivers and modifications must be in writing signed
21 by both parties, except as otherwise provided herein.” *Mot.* at Ex. 3:4. *Emphasis added.* Therefore,
22 there is a reasonable probability that the Agreement entered into between the parties is controlling
23 despite the March 25, 2015 Memorandum of Understanding.
24
25
26
27
28

1 Next, this Court addresses the Customer Data as defined in subsections 3.1 and 3.2 of the
2 Agreement.

3 Subsection 3.1 of the Agreement provides in relevant part:

4 Each party (the "Receiving-Party") understands that the other party (the
5 "Disclosing Party") has disclosed or may disclose business, technical or
6 financial information relating to the Disclosing Party's business (hereinafter
7 referred to as "Proprietary Information" of the Disclosing Party), Proprietary
8 Information of Company includes non-public information regarding features,
9 functionality and performance of the Service. *Proprietary Information of
customer includes non-public data provided by Customer to Company to enable
the provision of the Services ("Customer Data") such as non-public citizen
email addresses or other non-public citizen data. Emphasis added.*

10 Subsection 3.1 of the Agreement also states that GSGI was "(i) to take reasonable
11 precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the
12 Services or as otherwise permitted herein) or divulge to any third person any such Proprietary
13 Information."

14 Subsection 3.2 of the Agreement states that IVGID "shall own all right title and interest in
15 and to the Customer Data." Subsection 3.2 further provides that GSGI "shall own and retain all
16 right, title and interest in and to (a) the Services and Software, all improvements, enhancements or
17 modifications thereto, (b) any software, applications, inventions or other technology developed in
18 connection with Implementation Services or support, and (c) all intellectual property rights
19 pertaining to the foregoing."
20
21

22 It has been held that "[a] court should not interpret a contract so as to make meaningless its
23 provisions" and "[e]very word must be given effect if at all possible." Bielar v. Washoe Health Sys.,
24 Inc., 129 Nev. Adv. Op. 49, 306 P.3d 360, 364 (2013). If this Court were to accept GSGI's
25 interpretation of subsection 3.1 of the Agreement, the provisions that define Customer Data would
26 arguably be rendered meaningless. In spite of the fact that the parties contemplated that IVGID
27 would "provide" the Customer Data as evidenced by the Agreement, GSGI contends that under the
28

1 scheme developed by the parties, this could not and did not occur.

2 Importantly, the process for gathering and providing customer data to GSGI was arguably
3 established when the Agreement was signed, i.e., IVGID, who alone possessed the customer's
4 physical addresses, would inform customers that it had partnered with GSGI and solicit their
5 participation in the program, which required that the customers submit their personal contact
6 information to GSGI. It appears that GSGI did not have access to customer contact information and
7 needed to rely solely on IVGID to reach out to customers. Arguably, but for IVGID's April 2015
8 letters sent to IVGID customers asking them to participate in the program, GSGI would not have had
9 the customer information and been able to administer its FlashVote surveys as contemplated by the
10 Agreement. *Mot.* at Ex. 1, 2. Subsection 3.1 of the Agreement appears to validate this process as the
11 process by which IVGID would provide Customer Data to GSGI. Accordingly, this Court finds that
12 IVGID has demonstrated a reasonable probability of success that it "provided" the Customer Data to
13 GSGI pursuant to subsection 3.1 of the Agreement.
14

15
16 Subsection 3.2 of the Agreement, states that IVGID "shall own all right title and interest in
17 and to the Customer Data." While this subsection also addresses GSGI's ownership rights, these
18 rights pertain to the Services, Software and Implementation Services. The Agreement defines
19 Services as "the Standard Tier of FlashVote services...a program of up to 12 monthly Stock
20 FlashVote Surveys and up to 6 Custom FlashVote Surveys...." The Agreement defines Software as
21 "the source code, object code, underlying structure, ideas, know-how or algorithms relevant to the
22 Services or any software, documentation or data related to the Services." Finally, Implementation
23 Services are defined as GSGI's obligation to use "commercially reasonable efforts to provide
24 Customer [IVGID] the services described in the Statement of Work. None of these appear to pertain
25 to or confirm an ownership in the Customer Data. Accordingly, this Court finds that IVGID has
26
27
28

1 demonstrated a reasonable probability of success that it owns the Customer Data.

2 The Agreement at subsection 3.1 provides that GSGI “shall not use” the Proprietary
3 Information, which includes the Customer Data, “(except in the performance of the Services, or as
4 otherwise permitted herein) or divulge to any third person any such Proprietary Information.” GSGI
5 does not dispute that it has used the Customer Data outside the bounds of the Services defined in the
6 Agreement and that this use has included surveys that have been distributed to IVGID customers
7 claiming the survey was sent on behalf of IVGID when it was not and surveys sent on behalf of
8 parties other than IVGID, including the Truckee Meadows Regional Planning Agency. And while
9 the Agreement has been terminated, Section 5 “Term and Termination” at subsection 5.2 provides
10 that “[a]ll sections of this Agreement which by their nature should survive termination will survive
11 termination, including, without limitation...confidentiality obligations....” Again, Section 3 of the
12 Agreement, which defines Proprietary Information to include Customer Data is entitled,
13 “Confidentiality; Proprietary Rights.” Accordingly, GSGI’s duties and obligations regarding use of
14 the Customer Data have likely survived the termination of the Agreement. Therefore, this Court
15 finds that IVGID has demonstrated a reasonable probability of success that GSGI’s continued use of
16 the Customer Data violates the Agreement.
17
18
19

20 According to the above analysis, this Court finds that IVGID has proven a likelihood of
21 success on the merits on its claims for declaratory and injunctive relief.

22 2. *Irreparable Harm*

23 Next, this Court must determine whether Plaintiff will be irreparably harmed if GSGI is
24 allowed to continue using the Customer Data in violation of the Agreement. In the *Motion*, IVGID
25 claims that irreparable injury has resulted and will continue because IVGID has an obligation to
26 protect the personal information of its customers and to prevent others from distributing such
27
28

1 information in IVGID's name. IVGID contends that allowing GSGI to continue to use the Customer
2 Data in violation of the Agreement, puts Plaintiff at risk of irreparable injury, opening Plaintiff up to
3 potential liabilities because GSGI continues to use IVGID's customer information without IVGID's
4 permission. IVGID also claims that irreparable injury will be suffered by IVGID because Incline
5 Village is a very small community and its management and personnel, who have become fearful for
6 their safety, are being personally approached and accused by members of the community of
7 committing crimes against the customers and IVGID, and there is a resulting loss of confidence in
8 IVGID on behalf of its citizenry, an ongoing level of harassment and fomenting of injury. This
9 appears to be confirmed by the comments of the IVGID customers to the surveys that GSGI has
10 issued since the termination of the Agreement.
11

12
13 GSGI contends that IVGID has suffered no harm and that the injury IVGID is complaining
14 of is nothing more than the citizenry speaking out against its government and this does not qualify as
15 injury that will support a finding of irreparable harm.

16
17 Having reviewed the record and having heard the parties' arguments, this Court rejects
18 GSGI's contention that this is just a case of the citizenry speaking out against its government since
19 this is not the focus of the inquiry that this Court must make. This Court must focus on whether
20 IVGID has made the requisite showing of irreparable harm and inadequacy of legal remedies.

21
22 This Court finds that IVGID has made the requisite showing of irreparable harm and
23 inadequacy of legal remedies permitting this Court to grant injunctive relief pursuant to NRS
24 33.010(1). As evidenced by the actions of IVGID's citizenry both with respect to personally
25 approaching IVGID management and personnel alleging criminal behavior and with respect to
26 IVGID citizenry's response to the surveys issued by GSGI following termination of the Agreement,
27 IVGID has made the requisite showing that its reputation has been and will continue to be damaged
28

1 by GSGI's use of the Customer Data. Moreover, when IVGID solicited its customers to participate
2 in the FlashVote surveys with IVGID's April 2015 letters, the content of which was known to GSGI,
3 IVGID ensured its customers that FlashVote's surveys would be "unbiased," that IVGID was
4 GSGI's partner in the survey process and that the customers' "personal data stays private." GSGI's
5 current use of the Customer Data arguably violates each of these assurances and may subject IVGID
6 to legal action from its customers for which legal remedies may be inadequate.


8 Accordingly, and good cause appearing,

9 IT IS HEREBY ORDERED that IVGID's *Motion for Preliminary Injunctive Relief* is
10 GRANTED. "

11 IT IS HEREBY FURTHER ORDERED that GSGI is prohibited from any further use of
12 IVGID's Customer Data until the Court has ruled on the merits of this case.

13 IT IS HEREBY FURTHER ORDERED that IVGID is exempt from posting a security bond
14 as an agency under NRCP 65(c).

15 DATED this 10th day of January, 2018.

16
17
18 
19 KATHLEEN M. DRAKULICH
20 District Judge
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

1 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
2 STATE OF NEVADA, COUNTY OF WASHOE; that on the 10th day of January, 2018, I did
3 the following:

4 Electronically filed with the Clerk of the Court, using the eFlex system which
5 constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

6 RICHARD J. MCGUFFIN, ESQ.

7 RYAN W. HERRICK, ESQ.

8 JASON D. GUINASSO, ESQ.

9 DEVON T. REESE, ESQ.

10 Transmitted document to the Second Judicial District Court mailing system in a sealed
11 envelope for postage and mailing by Washoe County using the United States Postal Service in
12 Reno, Nevada:

13 NONE

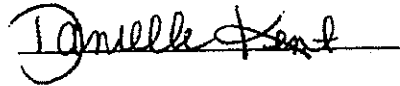
14 
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT D

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT D



Conduct Meetings of the Board of Trustees Policy 3.1.0

- f. Contracts. Contracts entered into by the District that are required to be advertised under Nevada Revised Statutes 332 and/or 338 must be approved by the Board of Trustees. All documents approved or awarded by the Board shall be signed in the name of the District by the Chair and countersigned by the Secretary, unless authorization to sign is given to another person(s) by the Board.

Contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees.

Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and executed by the General Manager or his designee of the District, if it is for an amount less than the advertising threshold of Nevada Revised Statute 332. Contracts over the threshold of NRS 322.115 must be approved by the Board of Trustees.

- g. Claims. The General Manager and General Counsel, and their designees, are authorized to negotiate on behalf of IVGID, the settlement of all property damage, personal injury, or liability claims, unless otherwise ordered by the Board of Trustees. Final settlement of such claims may be authorized by the General Manager, provided the amount attributed to IVGID is less than the amount that must be approved by the Board for amounts per occurrence, including all sources of payment (insurance, risk reserve, operating funds, or working capital). For claims that exceed the amount, those must be approved by the Board, the General Manager may authorize and accept a tentative settlement, which shall not be final and binding upon IVGID, unless and until approved by the Board of Trustees.

RESOLUTION NO. 1480

A RESOLUTION ADOPTING A
PERSONNEL MANAGEMENT POLICY

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

WHEREAS, the Board of Trustees of the Incline Village
General Improvement District desires to establish a framework for
the Board and General Manager to use in addressing personnel
matters within IVGID;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

The Policy Statement titled "Personnel Management" attached
hereto as Exhibit A, is adopted as Policy and Procedure Resolution
No. 105.

* * * * *

I hereby certify that the foregoing is a full, true and
correct copy of a resolution duly passed and adopted at a regular-
ly held meeting of the Board of Trustees of the Incline Village
General Improvement District on the 29th day of November
1984, by the following vote:

AYES, and in favor thereof, Trustees:

Jane Maxfield, Bob Wolf, Bob Jones, Syd Brosten

NOES, Trustees: None

ABSENT, Trustees: None

ABSTENTION, Trustee: Tom Duggan


Secretary

Resolution Number 1480
Adopted November 29, 1984

Policy Statement
PERSONNEL MANAGEMENT
Incline Village General Improvement District

I. PURPOSE

The Incline Village General Improvement District (IVGID) is committed to maintaining a dedicated and motivated work force, while developing its Staff's technical and professional standards to meeting changing demands for services with the Village. This policy statement establishes a framework which the Board of Trustees and the General Manager will use in addressing personnel matters within IVGID.

II. ROLES

The District operates under a Board-Manager form of government which places the Board of Trustees in the role of establishing overall IVGID policy direction. IVGID Staff is appointed to administer and execute day-to-day operations. The Manager is responsible for supervising these operations and providing general administrative direction.

With regarding to IVGID personnel, it is the Board's responsibility to establish overall guidelines governing IVGID's approach to personnel matters. The Manager's role is to put these guidelines into the day-to-day practice of hiring, firing, motivating, promoting, demoting, compensating, and training individual employees.

III. GENERAL OBJECTIVES

The Board hereby establishes the following general personnel objectives for IVGID.

- o Employee Development. IVGID will motivate and train existing employees to become more productive and proficient in their current jobs. Where appropriate, IVGID will encourage employees to develop new skills which might lead to job advancement. Where appropriate, IVGID will cross-train employees to cover temporary vacancies on related jobs.

EXHIBIT A

Resolution Number 1480
Adopted November 29, 1984

Policy Statement
PERSONNEL MANAGEMENT
Incline Village General Improvement District

- Attrition Management. IVGID will evaluate alternatives to filling positions which become vacant, as a means to reduce costs. These alternatives may include changes in work routines, job descriptions, work hours, or scope of services. They may include combining positions or reassigning work or personnel from one department to another.
- Recruitment. When vacancies must be filled from outside the ranks of the existing work force, IVGID will recruit and hire the most qualified candidates for the job, based strictly upon merit. Merit selection implies that anyone may apply, and that candidates are evaluated fairly by the appointing authority, based upon job-related criteria established in advance. In general, local recruitment is sufficient for clerical positions, semiskilled laborer positions, lower level technical positions, and all part-time or temporary positions. A larger recruitment area may be required for more highly skilled positions. Where local and non-local candidate are being considered which have equal or nearly equivalent qualifications, the local candidate will be preferred.
- Performance Standards and Evaluations. IVGID will establish clear standards for employee performance, and encourage employees to maintain these standards through ongoing communication with supervisors, performance evaluations, and where necessary, disciplinary procedures, demotion or termination.
- Longevity. IVGID will ensure the longevity of loyal and hard-working employees which have provided many years of faithful service to the community.
- Management. IVIGD will develop senior department heads as a management team which can work with the General Manager in addressing overall IVGID administrative needs and assist the Board of Trustees in policy development.

EXHIBIT A

Resolution Number 1480
Adopted November 29, 1984

Policy Statement
PERSONNEL MANAGEMENT
Incline Village General Improvement District

- Guidelines. IVGID will develop a uniform set of guidelines to direct the administration of the District's personnel matters.
- Planning. IVGID will develop a strategic approach to personnel administration which will diagnose long-term problems, anticipate future needs, and develop a stable framework for addressing these problems and needs in an orderly fashion.
- Unions. IVGID will maintain a cooperative relationship with collective bargaining units and their representatives, which establishes a clear understanding of the proper roles for both unions and management.

IV. PROCEDURES

The General Manager is accountable to the Board of Trustees for the fair and efficient execution of these guidelines, as well as the overall performance of IVGID. In order to maintain this accountability, the General Manager must be given the authority to administer personnel matters without direct Trustee intervention or influence.

The following procedures shall govern the personnel practices of IVGID:

- The General Manager shall maintain direct, day-to-day supervision over all District employees, with the exception of the Attorney. Supervision includes the power to hire, fire, motivate, discipline, evaluate, promote, demote, transfer, and train employees, subject to established personnel guidelines, union contracts, Board policy, and generally accepted personnel practices.
- The General Manager will keep the Trustees informed about the status of all major personnel actions relating to department head positions. Department head appointments and terminations shall be discussed with the Trustees in advance. Information on personnel actions relating to non-department head positions will be provided on an as-requested basis.

EXHIBIT A

Resolution Number 1480
Adopted November 29, 1984

Policy Statement
PERSONNEL MANAGEMENT
Incline Village General Improvement District

- Trustees are encouraged to express their opinion and/or concerns on any personnel matter to the General Manager in private. Trustees, individually or as a body, will refrain from directly intervening in or publicly influencing any personnel matter within the jurisdiction of the General Manager.
- Trustees will exercise their authority to direct Staff, collectively, through the General Manager, at Board meetings. Individual Trustees shall refrain from directing or attempting to directly supervise Staff. This policy statement is not intended to prevent individual Trustees from occasionally making suggestions to supervisor Staff, when such suggestions do not imply supervisory direction.
- All union matters, other than overall negotiation strategy, will be handled by the General Manager. The Board will maintain responsibility for establishing overall negotiation strategy and approving final union contracts.
- The General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees.
- The General Manager shall recommend, and the Board of Trustees shall establish, salary ranges for all non-contract, full-time permanent employment classifications. Salary ranges shall be based upon objective criteria not specific to individual employees, relating to union contracts, market conditions, cost of living, budgetary guidelines, legal considerations, and job descriptions.
- The General Manager shall set a specific salary for each employee within the salary range established by the Board of Trustees. Specific salaries shall be based upon employee-specific information, including qualifications, experience, longevity, and performance evaluations.

EXHIBIT A

Policy and Procedure Resolution No. 105

Resolution Number 1480
Adopted November 29, 1984

Policy Statement
PERSONNEL MANAGEMENT
Incline Village General Improvement District

- The Board of Trustees shall exercise its exclusive power to create full-time permanent employment positions, considering the recommendations, if any, of the General Manager. The General Manager shall establish, and as deemed necessary, amend detailed job descriptions for positions of employment. The General Manager may create temporary, seasonal and part-time positions of employment, and the wages and terms of employment thereof, subject to general personnel and budgetary guidelines, Board policies, and union contracts.
- The General Manager shall have the authority to establish and revise chains of command, reporting relationships among personnel, organization charts, and other structural matters pertaining to the organization of the District, provided that the Board of Trustees shall exercise the exclusive power to create or abolish operating departments of the District. The Board's power shall be exercised by resolution.
- The General Manager may eliminate positions, combine positions, lay off personnel, or reduce work hours, as deemed necessary to maintain a balanced budget, improve efficiency, or accomplish other administrative objectives, subject to general personnel guidelines, union contracts, legal considerations, or Board policy. Where such actions pertain to full-time permanent personnel, the General Manager shall notify the Board of Trustees of the actions in advance, and the Board may, by majority vote, override such proposals.

EXHIBIT A

RETAINER AGREEMENT

By and Between

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

And

THE LAW OFFICES OF REESE KINTZ GUINASSO, L.L.C.

TABLE OF CONTENTS
IVGID ATTORNEY RETAINER AGREEMENT

RECITALS.....	2
1. Retainer Agreement	3
2. Term	3
3. IVGID Attorney Services.....	3
4. Additional IVGID Attorney Legal Services.....	8
5. Special Counsel Services	9
6. Compensation For Special Services	11
7. Use of Necessary Consultants Or Other Special Counsel; Approval Procedure.....	14
8. Disclosure	14
9. Contract Administration	17
10. General	17
11. Appointment.....	19
Exhibit A: Exemplary Form of Legal Services Work Order No.	21

THIS RETAINER AGREEMENT (the "Retainer Agreement") is entered into by and between the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT ("IVGID") and the law firm of REESE KINTZ GUINASSO, L.L.C. ("Firm") and is effective as of the 1st day of January 2017.

RECITALS

WHEREAS, IVGID and Firm desire to engage in a stable and flexible long term contractual relationship whereby IVGID can recognize pricing efficiencies for legal services and the Firm is available to provide service as IVGID Attorney, as well as additional legal services on an as needed basis, in a thoughtful and cost effective manner; and

WHEREAS, IVGID and Firm desire to respectively receive and provide legal services specifically described herein pursuant to this Retainer Agreement;

WHEREAS, IVGID and Firm specifically acknowledge that this Agreement is not an employment agreement and does not establish a relationship of employer and employee between Firm and IVGID, between IVGID Attorney and IVGID, or between IVGID and any Firm Attorney, but defines a relationship between the parties wherein the Firm, its officers and employees, including those designated IVGID Attorney or Assistant IVGID Attorney are in fact independent contactors of IVGID and remain solely the employees of the Firm; and

WHEREAS, Firm reserves its independence to act within the limits imposed by law and professional obligations such that IVGID's policy objectives during the representation will be furthered through means the Firm considers appropriate under its professional obligations after consultation with IVGID and as may otherwise be required by the rules regulating the Nevada Bar.

NOW, THEREFORE, it is agreed as follows:

1. **RETAINER AGREEMENT.** This Retainer Agreement restates, supersedes, and replaces all prior agreements between the parties concerning the provision of legal services in the manner and under the terms described in this Agreement.
2. **TERM.** The term of the Agreement shall be for a period of two (2) years, commencing on January 1, 2017, subject to termination, as set forth in Section 10.3 below.
3. **IVGID ATTORNEY SERVICES.**
 - 3.1. Firm will provide legal services as IVGID Attorney to IVGID relative to the direction of the IVGID General Manager as prescribed under Resolution 1480, the District's personnel management policy, which states, "the General Manager shall be responsible for coordinating the work of the Attorney with the activities of IVGID Staff, and the Board of Trustees."
 - 3.2. IVGID Attorney shall serve as chief legal advisor to IVGID Board of Trustees, IVGID General Manager, and all IVGID departments and offices. IVGID attorney shall represent IVGID in all legal proceedings, except as set forth in Section 3.6.6 below.
 - 3.3. For purposes of this Retainer Agreement Devon T. Reese, Esq. and Jason D. Guinasso, Esq., of Firm shall be designated as IVGID Attorney ("Designated Lawyer"). The Designated Lawyer of the Firm serving as IVGID Attorney for IVGID may be substituted following notice to IVGID General Manager.
 - 3.4. Firm shall also designate one or more attorneys, who along with the Designated Lawyer shall serve accompanied by other members of the Firm, and IVGID shall have access to the complete complement of practice groups and breadth of experience of Firm attorneys along with the full statewide resources of the Firm.

3.5. The contemplated services described in this Agreement are to be provided in conjunction with efforts of designated officials and staff of IVGID to achieve the goals of IVGID as determined by the IVGID Board and the IVGID General Manager. The Agreement contemplates that the work will be assigned to IVGID Attorney by IVGID General Manager. Such legal services, as enumerated below, are to be provided as IVGID Attorney Legal Services on a monthly retainer basis, and supplemented by additional IVGID Attorney Legal Services, as enumerated below, on an hourly basis as approved by work order. Additional Special Counsel Legal Services will also be provided separately by the Firm or other firms on an hourly basis by separate work orders for special services or as otherwise approved by IVGID General Manager as provided in Sections 4 and 5 hereof.

3.6. IVGID Attorney Legal Services encompass the following:

3.6.1. Attend one IVGID Board meeting per month.

3.6.2. Attend one IVGID workshop per month;

3.6.3. Review and approve meeting agendas to ensure that they are in compliance with the Nevada Open Meeting Law.

3.6.3.a. Open Meeting Law complaints resulting out of reviewed and approved meeting agendas by Counsel shall fall under the services covered by the monthly retainer fee. Open Meeting Law complaints resulting from unreviewed or unapproved meeting agendas or actions taken during the meeting that the Board elects to do without seeking advice from Counsel shall fall under 4. Additional IVGID Attorney Legal Services and/or 5. Special Counsel Services as defined in this agreement. Rates for these

two services are included in 6.3 and 6.4 respectively in this agreement.

- 3.6.4. Provide up to four training sessions for IVGID Board and staff each year that will help to reduce questions by IVGID Board and staff about legal issues and reduce IVGID's risk in its operations or, in the alternative, attend up to four additional workshops, retreats or other meetings at the request of the General Manager.
- 3.6.5. Participate in up to one weekly conference either in person or via teleconference (as required by IVGID General Manager) at a regular time to be mutually determined by IVGID General Manager and IVGID Attorney that will include IVGID Manager and Department Heads (also referred to commonly as the "Senior Team") to identify and discuss outstanding legal issues, discuss projects both proposed and in development, share information associated with services to be provided by the Firm, and address the means to serve IVGID's legal needs;
- 3.6.6. Participate in up to one bi-weekly conference with the Director of Human Resources, the Director of Public Works, and other Department Heads and Directors as requested, either in person or via teleconference, at a regular time to be mutually determined by IVGID Attorney and Department Head or Director to identify and discuss outstanding legal issues, discuss projects both proposed and in development, share information associated with services to be provided by the Firm, and answer questions.
- 3.6.7. Assist IVGID Clerk or other designee with responses to public records requests.

- 3.6.8. Develop and implement a procedure to provide prompt responses to IVGID General Manager with date stamping (or other tracking for accountability purposes) of all internal requests for legal services and to coordinate that work with IVGID General Manager's work-plans and develop appropriate quality control and establish with the IVGID General Manager benchmarks to measure performance under this Agreement;
- 3.6.9. Develop and submit a budget for providing legal services (including additional IVGID Attorney Legal Services) for each fiscal year as requested and in the format required by IVGID General Manager and develop and submit to IVGID General Manager a budget for any additional IVGID Attorney Legal Services not included in the budget and any Special Counsel Services when authorized either upon request in advance of receiving a work order or within 10 days of receiving a work order for those services and thereafter to update the budget regularly and seek approval from IVGID General Manager for increases in the budget and before performing work that will exceed the budget for that work (except in an emergency and upon approval by IVGID General Manager);
- 3.6.10. Provide administration and periodic oversight and review of all special counsel engagements (including those involving other law firms or attorneys), or use of consultants necessary to support all special counsel engagements, including review, analysis and recommendation regarding payment of all billings by special counsel, including consultants;
- 3.6.11. Provide legal advice to IVGID Board and participate in individual calls with IVGID Board

members in order to provide advice to the Board regarding upcoming IVGID Board agenda items or ethics inquiries and participate in the preparation of agendas for IVGID Board and be prepared to offer legal advice on all agenda items at meetings of the Board or other committees and public bodies the Board shall appoint;

- 3.6.12. Provide to IVGID General Manager a monthly report that describes the status of all outstanding matters and provides such other information regarding the matters being handled by the Firm under this Agreement;
- 3.6.13. Facilitate the adherence to provisions of IVGID Ordinances, Resolutions and Policies, and contracts and drafting appropriate ordinances, resolutions, legislation, service agreements, inter-local agreements, and other contracts, documents and instruments to collaboratively and cooperatively achieve IVGID's objectives in the most cost effective and time efficient manner;
- 3.6.14. Provide review and input for vendor contractors or contemplated purchases to assist venue or accounting staff.
- 3.6.15. Clearly distinguish between legal advice and business advice when providing services to the Board, General Manager and staff;
- 3.6.16. Provide the Board and IVGID General Manager timely updates regarding changes in the law (legislation or cases) that may affect IVGID operations, policies or activities; and
- 3.6.17. Provide the IVGID General Manager with options to cost effectively handle all legal matters incorporated in this Agreement while retaining

the high quality of legal services through the use of forms, the use of lower priced staff, various alternate billing methods including using special counsel, temporary employees, task based billing, or other methods of charging for services or service delivery.

- 3.6.18. IVGID Attorney Legal Services do not encompass or include Additional IVGID Attorney Legal Services or Special Counsel Legal Services described herein, nor bond counsel, disclosure counsel or other legal services not specifically included in this subsection.

4. ADDITIONAL IVGID ATTORNEY LEGAL SERVICES.

- 4.1. Additional IVGID Attorney Legal Services encompass the following:

- 4.1.1. Attend, as reasonably required or requested, all meetings of IVGID Board not described in the foregoing subsection as IVGID Attorney Legal Services, and attend meetings with third parties or IVGID staff and/or IVGID Department Heads, as reasonably required or requested by IVGID General Manager.
- 4.1.2. Represent IVGID in the acquisition and disposition of real property rights and interests in the normal course of business, including the issuance of title insurance commitments and policies;
- 4.1.3. Coordinate, in concert with IVGID General Manager, with legal counsel and other professionals representing governmental agencies or third parties on routine legal matters affecting IVGID in the normal course of business;
- 4.1.4. Attend Ordinance and/or code enforcement hearings and defend decisions of IVGID General Manager and Senior Staff in court of law and/or

- before administrative agencies;
- 4.1.5. Perform other legal services which IVGID and Firm mutually agree are outside the normal and regular scope of day-to-day general counsel services, including special legal projects of a significant nature outside the normal day-to-day representation of IVGID;
 - 4.1.6. Prosecute or defend litigation as directed by the IVGID General Manager, including mediation, validation proceedings, and arbitrations before administrative boards, arbitrators, mediators, courts of all levels of the county, state or federal governments and report to the IVGID General Manager on that litigation regularly; and
 - 4.1.7. Prosecute or defend appeals in the courts of this state and the federal government and administrative boards having jurisdiction over matters affecting IVGID as directed by the IVGID General Manager.
 - 4.1.8. Special Counsel Legal Services described in Section 4 hereof,
 - 4.1.9. Bond counsel and disclosure counsel services.
 - 4.1.10. The provision of Additional IVGID Attorney Legal Services shall be conditioned upon a scope of services as directed or authorized by IVGID General Manager and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A";

5. SPECIAL COUNSEL SERVICES.

- 5.1. Firm shall also be available to provide Special Counsel Legal Services to IVGID. Special Counsel Legal Services are to be provided on an hourly basis or by task based billing or other billing arrangements as agreed upon by the parties in advance and commenced by separate work orders as described in this Agreement and as agreed by the parties. Such services are of a nature that require recognized expertise, experience, or specialized subject

matter knowledge and focus above and beyond routine or normal day-to-day IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services, and shall generally include the following:

- 5.1.1. Providing advice, research, and assistance on extraordinary IVGID administration or operational matters and negotiations;
- 5.1.2. Rendering written memoranda or opinions outside the scope of IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services and which expose the Firm to significant liability;
- 5.1.3. Providing advice and research on the feasibility and legal sufficiency of statutory and alternative revenue sources, including the development or implementation of special assessment, impact fee, user fee, extraordinary revenue, utility fee or rate programs;
- 5.1.4. Negotiating, preparing, obtaining, delivering, and filing all documents in connection with the closing on any acquisition, contribution, sale, exchange, or disposition of any significant IVGID assets or systems requiring the financing thereof, including real and personal property associated with such IVGID assets or systems;
- 5.1.5. Nominally acting as a lobbyist before any legislative, administrative, or executive branch of government (such services, if extensive, may require a separate engagement);
- 5.1.6. Legal formulation, negotiation, drafting, and implementation of special or significant IVGID programs or initiatives;

5.1.7. The provision of Special Counsel Legal Services shall be conditioned upon a scope of services as directed or authorized by IVGID General Manager and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A";

5.1.8. Special Counsel Legal Services described in this section do not include bond counsel, disclosure counsel, underwriter's counsel, or other legal services which are already or will be the subject of other separate agreements with IVGID, or are premised upon negotiated fees; or other legal services otherwise subsequently agreed to between the parties or third parties.

6. COMPENSATION FOR PROFESSIONAL SERVICES.

6.1. Firm will be compensated for IVGID Attorney Legal Services at the monthly retainer rate as authorized herein. Firm will be compensated for Additional IVGID Attorney Legal Services and Special Counsel Legal Services at hourly rates as authorized herein. Unless otherwise agreed to by the parties in separate writing, Firm will be compensated for legal services at negotiated and hourly rates as authorized herein.

6.2. The Firm will be compensated for IVGID Attorney Legal Services at the Firm's following monthly retainer rate:

6.2.1. **Ten Thousand Dollars (\$10,000) per month** to be billed at the beginning of each calendar month for work to be performed and paid within thirty (30) days.

6.2.2. An IVGID recreational pass will be made available to requesting Designated Lawyer on an as needed basis to conduct IVGID Business.

6.3. The Firm will be compensated for Additional IVGID Attorney Legal Services for hourly work at the following hourly rates:

6.3.1. **A blended rate of \$150 per hour** of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

6.3.2. Firm paralegals or law clerks at the **rate of \$75.00 per hour** (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise. Firm agrees to assign matters to paralegals and law clerks to achieve the most cost effective service in IVGID's best interest.

6.3.3. Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk or combination of attorney, paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance. Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to IVGID as is in IVGID's best interest.

6.4. The Firm will be compensated for Special Counsel Legal Services for hourly work at the following discounted and blended hourly rates:

6.4.1. **A blended rate of \$250 per hour** of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

6.4.2. Firm paralegals or law clerks at the **rate of \$90.00 per hour** (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; and

- 6.4.3. (c) Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to IVGID as is in IVGID's best interest and Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance.
- 6.5. No attorney time shall be charged for any travel to IVGID or for travel to any meetings of IVGID Board if held within Washoe County, Douglas County or Carson City.
- 6.6. The Firm shall also be entitled to receive reimbursement for actual costs incurred such as, long distance telephone charges, overnight delivery charges, and travel expenses when such travel is necessary and requested from outside of Washoe County, Douglas County or Carson City; however, no other overhead charges will be reimbursed for copying, secretarial services or other overhead as those costs are considered a part of the fees paid under this Agreement. No travel expenses will be charged for daily travel within IVGID or for any travel for the purpose of attending and staffing any regularly scheduled meeting of IVGID Board in the Firm's role in providing IVGID Attorney Legal Services.
- 6.7. The Firm shall bill IVGID periodically for monthly retainer and hourly work, but not more often than monthly, and provide an itemized statement of fees for services provided and costs incurred to date. Invoices must be submitted within 60 days of the first billing date in the cycle and all bills for the fiscal year must be submitted within 30 days after the conclusion of that fiscal year with an estimate of that bill's total submitted before the end of the fiscal year as reasonably required by IVGID General Manager. All invoices shall include documentation for costs and be submitted to, approved, and promptly processed for payment by IVGID General

Manager.

7. USE OF NECESSARY CONSULTANTS OR OTHER SPECIAL COUNSEL; APPROVAL PROCEDURE.

7.1. IVGID may necessarily require legal expertise beyond the scope of IVGID Attorney, Additional IVGID Attorney, or Special Counsel legal service roles contemplated herein. Subject to the concurrence or recommendation of IVGID General Manager and, if required, the approval of IVGID Board, the Firm shall have the authority to use or retain on behalf of IVGID such additional consultants, experts, or counsel that it deems necessary to implement the objectives and programs of IVGID. Such approval shall be first requested in writing and shall include a scope of services and method of compensation for each additional consultant, expert, or counsel requested.

7.2. IVGID Attorney shall maintain oversight and request and provide to IVGID periodic status reports from either litigation or local counsel in the event of any representation pursuant to this section.

7.3. Statements for fees and costs incurred by any approved consultant, expert, or counsel, shall first be reviewed by the Firm for accuracy and completeness and, upon approval, be submitted to IVGID General Manager for payment.

8. DISCLOSURE.

8.1. IVGID recognizes that the Firm represents other clients in or near Incline Village as General Counsel, including but not limited to the North Lake Tahoe Fire Protection District, the Incline Village Crystal Bay Visitors Bureau and the Tahoe Douglas Fire Protection District.

8.2. The Firm as IVGID Attorney will not represent any client, including but not limited to a municipality, county, local

or state government agency or other person or entity in matters which the Firm determines to be directly adverse to IVGID nor will the Firm represent IVGID in matters which the Firm determines to be directly adverse to the interests of any other client of the Firm.

8.3. The rules regulating the Nevada Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest, even though there is some difference in interest among them.

8.3.1. It is also possible that during the course of the Firm's representation of IVGID's interests IVGID may become involved in transactions or disputes with other clients of the Firm in which IVGID's interests are or become adverse to the interests of one or more of the Firm's other clients, whether present or future. If such a conflict between IVGID interests and those of another of the Firm's clients, whether present or future, were to arise, the Firm will promptly notify IVGID of that circumstance.

8.3.2. The Firm reserves the right, on account of any such conflicts of interest, to withdraw from the matter in question and will assist IVGID in securing interim or alternative counsel for the matter in conflict if a conflict waiver is not otherwise permissible under the rules regulating the Nevada Bar.

8.3.3. The Firm represents local governments and private sector clients throughout Nevada and California, and wishes to be able to consider the representation of other local governments or public sector clients who may have interests that are potentially adverse to IVGID's, but with respect to matters that are unrelated in any way to our representation of IVGID. The ethics rules

that govern the Firm permit it to accept such multiple representations, assuming certain requirements are met. Accordingly, during the term of this engagement, the Firm agrees that it will not accept representation of another client to pursue interests that are directly adverse to IVGID's interests unless and until the Firm makes full disclosure to IVGID of all the relevant facts, circumstances, and implications of the Firm's undertaking the two representations, and confirm to IVGID in good faith that the Firm has done so and that the following criteria are met:

8.3.3.1. there is no substantial relationship between any matter in which the Firm is representing or has represented IVGID and the matter for the other client;

8.3.3.2. any confidential information that the Firm has received from IVGID will not be available to the attorneys and other Firm personnel involved in the representation of the other client;

8.3.3.3. our effective representation of IVGID and the discharge of the Firm's professional responsibilities to IVGID will not be prejudiced by representation of the other client; and

8.3.3.4. the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances, and implications of the Firm's undertaking the two representations. If the foregoing conditions are satisfied, IVGID agrees that the Firm may undertake the potentially adverse representation and that all conflict issues will be deemed to have been resolved or waived by IVGID.

9. CONTRACT ADMINISTRATION.

- 9.1. In accordance with IVGID Resolution 1480, Policy and Procedure 105, the IVGID Board has designated its General Manager to provide policy direction and instructions to the Firm in the administration of its duties hereunder, approving and authorizing work orders, the provision of Additional Legal Services and all other matters necessary to administer this Retainer Agreement on behalf of IVGID.
- 9.2. The Firm shall be entitled to reasonably rely upon such direction received from IVGID General Manager.
- 9.3. The Firm will alert IVGID General Manager if any project or service it is working on or which it is asked to work on may exceed the budget for the year, or for that project or service and will not proceed to provide services for which it seeks compensation until sufficient funding to pay the Firm for its services for the project or service is approved; unless specifically directed by IVGID General Manager to proceed.

10. GENERAL.

10.1. This Retainer Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. In the event of any dispute arising out of or relating to this Retainer Agreement, the parties agree to waive trial by jury and agree that venue shall lie in Washoe County, Nevada. In the case of litigation of such disputes, the prevailing party shall be entitled to recover attorney fees and costs from the other party. This Retainer Agreement may be amended only by a written agreement entered into by the parties.

10.2. IVGID General Manager will evaluate the performance of the legal services of the Firm on at least an annual basis

and shall review such evaluation with the Firm. The evaluation shall include input from each member of the Board of Trustees as solicited by the IVGID General Manager, Senior Staff and the General Manager, and shall be completed by June 30 of each year. More frequent and informal performance evaluations and feedback may be undertaken by IVGID at any time.

10.3. This Retainer Agreement or the appointment of Firm as IVGID Attorney to IVGID may be terminated with or without cause by IVGID General Manager or upon the hiring of a full-time attorney directly employed by IVGID as IVGID Attorney or by Firm at any time upon one hundred and eighty (180) days written notice.

10.3.1. In the event that IVGID desires to terminate Firm's services with notice of a lesser period, IVGID will provide Firm with a severance payment, equal to the agreed upon monthly retainer, for each month of said specified one hundred and eighty (180) day notice period for which notice is shortened and is not given.

10.3.2. Additionally, even if IVGID does elect to seek and obtain either IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services, or both, from an attorney or firm other than Firm, this contract may stay in force and effect so that the Firm is available to provide to IVGID, on an as needed and agreed to basis, supplemental legal services as provided for herein.

10.3.3. In the event of termination, the Firm shall assume responsibility for completion of and shall be compensated for all representation requested prior to the notice of termination and through any prompt transition to termination agreed upon by the parties at the hourly rates agreed upon for Additional IVGID Attorney Legal

Services for any remaining IVGID Attorney Legal Services or Additional IVGID Attorney Legal Services and at the rates agreed upon for Special Counsel Legal Services for those services. Provided however, IVGID may terminate this Retainer Agreement for breach by the Firm with such notice as may be reasonable under the circumstances.

10.3.4. In the event of termination, with or without cause, the Firm shall be compensated in accordance herewith for approved time and expenses expended prior to the date of termination. This Retainer Agreement may be executed in multiple counterparts.

10.3.5. All original files (their contents), records and documents are the property of IVGID and not of the Firm or its Attorneys and upon termination shall be returned to or delivered to IVGID as IVGID General Manager reasonably directs at the expense of the Firm. The Firm may retain copies as necessary to comply with the Rules of the Nevada Bar.

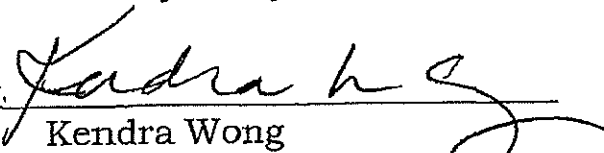
10.4. This Retainer Agreement shall be effective as of the date first written above and is the entire agreement between the parties concerning the subject matter hereof.


11. APPOINTMENT.

11.1. The IVGID General Manager hereby recommends appointment of Firm as IVGID Attorney for IVGID with confirmation of said recommendation by IVGID Board; this Retainer Agreement shall hereafter provide the terms and conditions for such engagement. Such appointment may be changed or altered from time-to-time by recommended of IVGID General Manager and confirmation of said recommendation by IVGID Board. As

required, IVGID General Manager is directed and authorized to use and consult with Firm for IVGID Attorney Legal Services and Additional IVGID Attorney Legal Services as described herein. Additionally, and as required, IVGID General Manager is directed and authorized to use and consult with Firm for Special Counsel Legal Services at a cost not to exceed the delegated purchasing limit of IVGID Manager on any single project or matter. For projects or matters above the then current delegated purchasing limit of IVGID General Manager, Special Counsel Legal Services shall be provided by work order or as otherwise authorized and approved by action of IVGID Board.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

By: 
Kendra Wong
Chairwoman, Board of Trustees
Incline Village General Improvement
893 Southwood Blvd.
Incline Village, NV 89451-9425

By: 
Steve Pinkerton
General Manager
Incline Village General Improvement District
893 Southwood Blvd.
Incline Village, NV 89451-9425


By: 
Jason D. Guinasso, Esq.
The Law Offices of Reese Kintz Guinasso, L.L.C.
936 Southwood Blvd., Suite 301
Incline Village, Nevada 89451-9425

EXHIBIT A
EXEMPLARY FORM OF LEGAL SERVICES WORK ORDER No.

[insert an identifying work order number here]

TO:

FROM: IVGID General Manager

1. Scope of Services: [describe whether Additional IVGID Attorney services (general counsel) or Special Counsel Services] are to be performed based upon the description attached hereto (A-1) in a proposal by IVGID Attorney that describes the scope of services, the time for performance, the hourly rates if not as described in the Retainer and which estimates the cost of performance.
2. Compensation: Hourly rates and reimbursement for actual costs as provided in IVGID Attorney Retainer Agreement between the parties, or this Work Order. If different rates from those included in the Retainer agreement are not included in the Scope of Services, then the Retainer rates apply.
3. Work Order Budget: The initial funding authorization or budget appropriation for this Work Order shall not exceed the amount of [amount] or the estimate incorporated in the Scope of Services attached to this Work Order whichever is lower. However, it is understood that the direction of IVGID will control the work effort and additional budget appropriations may be required and authorized.
4. Use of Necessary Consultants: Pursuant to the Retainer Agreement, IVGID confirms, directs, and authorizes the use of (1) [name of consultant] and (2) [name of consultant] and the scope of services and method(s) of compensation necessary to support the provision of legal services and continued assistance to IVGID with the [describe work effort and provide attachment].]

Authorized by: _____

Accepted by: _____

Title: IVGID General Manager

Date: _____

[Attach Scope of Service A-1]

A-1 Attachment to Work Order No. [insert work order number here]

ADAM PAUL LAXALT
Attorney General



NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

November 30, 2017

via Certified Mail 7009 2250 0001 8859 8693

Incline Village General Improvement District – Board of Trustees
Kendra Wong, Chair
895 Southwood Boulevard
Incline Village, NV 89451

Dear Chair Wong:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML), NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the Incline Village General Improvement District Board of Trustees (Board).

The OAG requests that the Board prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the Board's response including, but not limited to, audio and/or video recordings of the Board's November 15, 2017 meeting in question. Please also provide a copy of the agenda and support materials from the September 20, 2017 meeting.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before December 15, 2017.

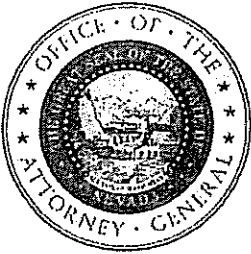
Should you have any questions, please contact Althea Zayas at (702) 486-3224 or via email at azayas@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
Chief Deputy Attorney General
Boards and Open Government Division

CB:arz
Enclosure



STATE OF NEVADA
 OFFICE OF THE ATTORNEY GENERAL

100 N. Carson St.
 Carson City, NV 89701
 Phone: 775-684-1100
 Fax: 775-684-1108

www.ag.nv.gov

For official use only

Received by: _____

Date Received: _____

Complaint Type: _____

Referred to: BCP GI
 IFU CML MFU
 MFCU PIU WCFU
 (Stamp here)

OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law – NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

Salutation: Mr. Mrs. Ms. Miss

Your Name: Wright Frank

Your Address: P.O. Box 186 Crystal Bay NV 89402

Your Phone Number: 775-253-4919 818-601-1996

Email: alpineport55@gmail.com

Call me between 8am-5pm at: Home Cell Work

Age: Under 18 18-29 30-39 40-49 50-59 60 or older

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Incline Village General Improvement Dist
 (i.e., specific board, commission, agency, or person(s) etc.)

Date of meeting where alleged violation occurred (mm/dd/yyyy): _____

over
 P. 2 on back

SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:


Incline Village General Improvement District held
An unannounced, closed, secret meeting of 5 board members
outside the view of the public.

See attached page

SECTION 3.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is not my private attorney, but rather represents the public. I am filing this complaint to notify the Attorney General's Office of alleged violations of the Open Meeting law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the public body identified in this complaint.


Signature

Frank Wright
Print Name

11-27-17
Date (mm/dd/yyyy)

SECTION 4. (Optional)

The following section is optional and is intended to help our office better serve Nevada consumers. Please check the categories that apply to you.

Gender: Male Female

Have you previously filed a complaint with our office?: Yes No
If yes, enter in the approximate filing date (mm/dd/yyyy) of your original complaint: _____

I am (mark all that apply):

- Income below federal poverty guideline
- Disaster victim
- Person with disability
- Medicaid recipient
- Military service member
- Veteran
- Immediate family of service member/veteran

Ethnic Identification:

- White/Caucasian
- Black/African American
- Hispanic/Latino
- Native American/Alaskan Native
- Asian/Pacific Islander
- Other: Senior Citizen

Primary Language:

- English
- Spanish
- Other: _____

May we provide your name and telephone number to the media in the event of an inquiry about this matter?

Yes No

How did you hear about our complaint form (please choose only one):

- Called/visited Las Vegas AG Office Called/visited Carson City Office Called/visited Reno Office
- Attended AG Presentation/Event Another Nevada State Agency/Elected Official Search Engine AG Website
- AG Social Media Sites Media: Newspaper/Radio/TV Other

Return original form to:

Office of the Attorney General – ATTN: OML Coordinator
100 N. Carson St.
Carson City, NV 89701
Fax: 775-684-1108
(Faxed copies will be accepted followed by original)

Office of the Attorney General
State of Nevada
OML Division

November 27, 2017

Dear MS Bateman,

I am again filing an open meeting law violation against Incline Village General Improvement district for holding a secret meeting after the November 15, 2017 regular board meeting.

Five Trustees were present, along with the General Manager, and legal counsel.

The regular meeting was adjourned, then the Trustees were told they had a closed session. But an interesting event took place, there was a power outage. The room went totally dark. But the Chairman continued with the unannounced and not publicly posted meeting. Because of the dark room, one resident who attended the regular board meeting was still present but unnoticed and sitting in the room. She was able to witness two Trustees reject the special meeting as a violation of the OML and proceeded to walk out of the room. (Matt Dent and Tim Calicrate) The resident sitting in the room was approached and ask to leave the room by the Finance Director Gerry Eick, and he escorted her to the door, and closed the door after she left the room.

This meeting had something to do with voting on litigation against a firm conducting surveys, and opinion polls. This vote should have been open to the public and discussed in an open meeting. Regardless of the content, the meeting under Nevada Law should have been posted. It is ironic that during the regular board meeting the board agenized and discussed the previous OML violations committed by the board. But not surprisingly the Legal Counsel Jason Guinasso and board Chair Kendra Wong both stated that the Attorney Generals opinions were contrite and just her opinions. Chairman Wong Stated: "it all depends on who is in the AG's office making the decisions, as to the validity of the opinions". These Statements can be viewed on the livestream. My initial opinion is that the legal Counsel and Board chair didn't view the OML opinions as a valid assessment of the behavior of the IVGID board. It sounded to me as if Chairman Wong, and Jason Guinasso , could give a "whoopy" as to what the AG has to say, or that the AG's opinions are baseless.

Resident who was present and in room during meeting:

Margaret Martini 775-722-4152

Margaretmartini@liveintahoe.com

Thank You,

Frank Wright

775-253-4919

alpinesportss@gmail.com

**CORRESPONDENCE
REGARDING
RESPONSE**

Subject: Re: OML Complaint 13897-257
Date: Monday, December 18, 2017 at 6:43:15 PM Pacific Standard Time
From: Jason D. Guinasso <jguinasso@hutchlegal.com>
To: Caroline Bateman <CBateman@ag.nv.gov>
CC: wong_trustee@ivgid.org <wong_trustee@ivgid.org>, Pinkerton, Steve J. <steve_pinkerton@ivgid.org>, Devon Reese <DReese@reesekintz.com>
Attachments: Cronin v Eighth Judicial Dist Court In and For County of Clark.pdf, Palmer v Pioneer Inn Associates Ltd.pdf, Rule 42 Communication With Person Represented by Counsel.pdf, Rule 113 Organization as Client.pdf, Log of Complaints including Ethics Commission.revised.pdf

Ms. Bateman -

Thank you for your thoughtful response. Again, let me be clear, I have no desire to obstruct your investigation. Additionally, my hope would be that we can engage in a constructive working relationship as you investigate and I respond to the Open Meeting Law (OML) Complaints that are filed against IVGID from time to time.

My clients and I have nothing to hide and have done nothing wrong. The OML complaint you are investigating is meritless on its face because it alleges that attempting to conduct a litigation non-meeting was somehow a violation of the OML. However, NRS 241.015(3)(b)(2) is clear when it excludes from the definition of "Meeting," for purposes of the OML, a meeting of a quorum of a public body "[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both." As the OAG Open Meeting Law Manual points out in Section 3.05, "A meeting held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to NRS 241.015(3)(b)(2) is not a meeting for purposes of the Open Meeting Law and does not have to be open to the public. In fact, no agenda is required to be posted and no notice is required to be provided to any member of the public."

I trust your interview of the Trustees will confirm that the subject matter of the complaint filed by Mr. Wright, who was not even at the meeting at the time he alleges there was a "closed session," is a litigation non-meeting that occurred on November 15, 2017, where ongoing litigation with the District was going to be discussed, not a closed session or secret meeting.

However, I again strongly object to you directly communicating with my clients. Please note that I also spoke with Nevada Bar Counsel this afternoon. Bar Counsel agreed that section 4.2 of the Nevada Rules of Professional Conduct apply and also noted that Rule 1.13 may also apply. Bar Counsel also directed my attention to a few Nevada cases that you may want to consider, including:

Cronin v. Eighth Judicial Dist. Court, In and For County of Clark, 105 Nev. 635 (1989)(in a case disqualifying an attorney, the court cited with approval Nevada SCR 182 and the comment to Model Rule 4.2 from which the Nevada Rule was adopted, stating in pertinent part, "In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.")

Palmer v. Pioneer Inn Associates, Ltd., 118 Nev. 943 (2002)(explaining that SCR 182's protections, "undisputedly extend to organizational parties, who must act through their directors and employees" and the elaborating on the purpose of the rule, stating, "The primary purpose of the rule is to protect the attorney-client relationship from intrusion by opposing counsel. It protects parties from unprincipled attorneys and safeguards the attorney-client privilege. It also promotes counsel's effective representation of a client by routing communication with the other side through counsel, who can present the information in a way most favorable to the client.")

Importantly, the Court in Palmer adopted the managing-speaking test which prohibits the interviewing of corporate employees who have the authority to bind the corporation. In this regard, under the test, a person considered a "party" covered by this rule when that person has managing authority sufficient to give them the right to speak for, and bind, the corporation. Trustees of the Incline General Improvement District both speak for and can bind the District. Certainly, some of that authority has been delegated to professional staff and no one Board member can act alone to bind the District; however, Trustees are elected to manage and supervise the operations of the District and they are expected to conduct their meetings in accordance with the Nevada Open Meeting Law.

It appears clear from the Rules and the cases interpreting the rules that your office is prohibited from communicating with and/or interviewing Trustees of the District without directing such communication through me as legal counsel for the District and/or obtaining my consent, after consultation with my clients, to conduct an interview.

Attached hereto are the referenced Nevada Rules of Professional Conduct as well as the cases that I just cited for your review and consideration.

Please note that I was specifically retained by the Board to represent the Board in all matters pertaining to OML Complaints. This portion of the scope of my representation is specifically outlined in my retainer agreement. I was hired by and serve the District at the pleasure of the Board and my day to day duties are directed by the General Manager.

The fact that you sent the notice of the OML complaint to me, and not to each individual Trustee, for an appropriate response is specific acknowledgement of the fact that I represent the Board, the District and the individual Trustees with respect to OML complaints filed against the District.

I am confident that you can appreciate the position I am taking on this issue because the OAG has taken a similar position with respect to the Boards and Board members it represents. In this regard, I sit on a State Board where I have benefited from the advice and counsel of attorneys from your office who represent me and the Board I sit on as a member. I would respectfully submit to you that the position you have outlined in your email to me contradicts the position your attorneys have taken when attorneys adverse to the Board attempt to communicate with Board members. Specifically, the OAG has taken the position that opposing counsel could not communicate directly with Members. Accordingly, all communication are directed through the DAG assigned to represent our Board. Thereafter, the DAG forwards the communication to the Board members.

I will close with two final points.

First, I am willing and able to set up a day and time for you to interview each of the Trustees. The point in my last two communications with you is to ask that you cease and desist from communicating directly with my clients. Such communication is prohibited under our Nevada Rules of Professional Conduct.

If you would have asked me to set up the telephone interviews when I reached out to you for an extension of time to prepare my response last Thursday afternoon instead of writing to my clients directly, I could have made sure that all the interviews were completed by the end of business today. Instead, we have both wasted time speaking with Bar Counsel and writing long emails to address a problem that could have been resolved with a phone call from you to me and/or a short email asking me to set up the interviews. Now, as you know, Trustee Morris is now out of the country for the holidays and will not return until the first of the year. I am told that the rest of the Trustees can make themselves available this week. Please advise if you would like me to schedule days and times for you to interview the Trustees who remain in town this week.

In my formal response to the OML Complaint later this week, I will also provide written statements from at least three of the five Trustees.

Finally, I am very concerned that you are unwittingly being used to further the political agenda of a few vocal and hostile members of the Incline Village and Crystal Bay Community. These people now see you, rightly or wrongly, as

an ally to their attacks on the District, individual Trustees and me. The attacks of these disgruntled community members take many forms, including but not limited to abusive and disruptive conduct during public comment, frivolous litigation in District Court (in one case the Court awarded the District nearly a quarter of a million dollars in fees and costs), the filing of OML complaints, complaints to the County Commission, complaints to the State Board of Taxation, complaints to Legislature and the Governor, etc.

To illustrate this point, I have attached for your review a log of the OML complaints filed against the District since 2011. Please note that I did not start representing the District until January of 2015. Nevertheless, whether it was my predecessor, my law partner or me, Frank Wright and Aaron Katz have been relentless in their attacks having filed 17 (Wright 10, Katz 7) of the 22 OML complaints against the District during that time period.

Additionally, please click into this drop box link:

https://www.dropbox.com/s/b6rshzk663mtjvf/Wright_Frank_Highlights.mp4?dl=0

This link will open up a video depicting excerpts of what Frank Wright has said and how he has acted at meetings over the last eighteen months. You will see a person who engages in slander, personal attacks and every form of insult and vitriol. Please pay particular attention to the last several minutes where he cites out of context conversations he has allegedly had with the OAG and/or the written decision you wrote finding no violation of the OML, but admonishing legal counsel regarding compliance with the spirit of the OML. Clearly, Mr. Wright is using OML complaints as a means to advance his political objectives and to harass the District.

Again, rather than trade emails, perhaps we can speak by phone and work out what you need to complete your investigation, including interviews with Trustees or Staff of IVGID. In any event, IVGID's formal response to the OML complaint filed by Mr. Wright will be submitted to you by the agreed upon deadline at the end of the week.

Very truly yours -

Jason

On Dec 18, 2017, at 11:26 AM, Caroline Bateman <CBateman@ag.nv.gov> wrote:

Mr. Guinasso:

Unless the IVGID Trustees have retained you individually, you are counsel to the District, not to its individual members. Rule 1.13 of the Nevada Rules of Professional Conduct (NRPC) clarifies that an attorney employed or retained by an organization represents *the organization*, not the individual members of the organization. I copied you on the emails to the trustees in the event that you also represent one or more of the trustees in their individual capacities. At least one of the Trustees have requested to speak to me without your attendance. Moreover, your representation of IVGID does not include the potential penalties outlined in NRS 241.040 against the trustees in their individual capacities. Therefore, Rule 4.2 does not apply to my communications to the trustees. However, moving forward, I will direct all communications to you, until advised otherwise.

Please note that if you are representing each of the trustees as individual clients, in addition to the District as a body, that based on the allegations in the Complaint under File No. 13897-257, there may be a conflict of interest between clients pursuant to NRPC Rule 1.7. Notably, your representation of trustees Callicrate and Dent may be directly adverse to your representation of the other trustees. Additionally, there may be a conflict to your own interests as you are a

subject to the present investigation.

I have consulted with the State Bar's Office of Bar Counsel regarding Rules 1.13, 4.2, and 1.7 for clarification.

Regarding any attorney-client communications that you may have had with the IVGID trustees, I can assure you that I will not violate the confidentiality of such communications or seek information related to those communications unless they pertain to any stated purposed behind the November 15, 2017 meeting.

In terms of the investigation timeline, although I was willing to accommodate your request for an extension of time to file the Board's response, I could not postpone my internal deadlines based on the extension of time. As you are aware, the OML provides a very limited time period in which the Attorney General's Office (OAG) can take action on a potential violation. As such, I will be proceeding with my investigation, including issuing subpoenas, pending the receipt of your response. However, please rest assure that I will not issue my final opinion until I receive, review, and fully investigate your response.

Thank you for your cooperation as the OAG completes its investigation.

Sincerely,

Caroline

Caroline Bateman
Chief Deputy Attorney General
Boards and Open Government Division
Nevada Office of the Attorney General
T: 702.486.0621
F: 702.486.3773
CBateman@ag.nv.gov

<image001.png>

This communication, including any attachments, contains confidential information and is intended only for the individual or entity to whom it is addressed. Any review, dissemination, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and delete all copies of the original message and any attachments from your workstation and network mail system.

From: Jason D. Guinasso [<mailto:jguinasso@hutchlegal.com>]
Sent: Friday, December 15, 2017 11:12 AM
To: Caroline Bateman <CBateman@ag.nv.gov>
Cc: wong_trustee@ivgid.org; Pinkerton, Steve J. <steve_pinkerton@ivgid.org>; Devon Reese <DReese@reesekintz.com>
Subject: Re: OML Complaint 13897-257

Ms. Bateman -

I have reviewed the emails you sent after regular business hours at 5:42 p.m. on December 15, 2017, to each of the Incline Village General Improvement District's (IVGID) Trustees

regarding your investigation into the Open Meeting Law complaint under File No. 13897-257.

First, I object to you directly communicating with my clients regarding your investigation. Our Nevada Rules of Professional Conduct specifically prohibit such communication. In this regard, Rule 4.2 provides:

Communication With Person Represented By Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

You know I am legal counsel for IVGID. In your emails, you seek an opportunity to further communicate with my clients concerning an investigation that would lead to legal findings and conclusions. Under these circumstances, you should not have communicated with any of them directly without my express permission.

Please be advised that IVGID will cooperate fully with your investigation. Nothing in this communication should be construed as inhibiting or impeding your investigation. In this regard, I am willing and able to set up times for you to interview the Trustees.

If you would like to communicate with my clients about your investigation, please be sure any further communication comes through me.

Second, the subject matter of the complaint filed by Mr. Wright is a litigation non-meeting that occurred on November 15, 2017, not a closed meeting, where ongoing litigation with the District was going to be discussed. As you know, communication between an attorney and the attorney's client in a litigation non-meeting is privileged and confidential.

Therefore, I respectfully submit that any questions you may have about what was discussed between me and my clients is prohibited and protected by the attorney client privilege.

However, that being said, please be advised that, after we began the non-meeting, we were not able to proceed with the non-meeting for three reasons: (1) We could not communicate effectively in the wake of a power outage; (2) a dispute about whether one Trustee could participate in the non-meeting could not be resolved; and (3) tensions between a few of the Trustees resulted in uncivil discourse. Therefore, I concluded the non-meeting and offered to meet with each Trustee individually. My recollection is that the litigation non-meeting did not last more than ten minutes. Subsequent to this meeting, I did meet with four of the five Trustees individually by phone or in person.

Finally, the fact that you are attempting to schedule a meeting with my clients to conduct an interview regarding your investigation before I have completed the District response is highly unusual. Based on my experience with your office when we have responded to OML complaints, the OAG has always requested additional information and/or an opportunity to interview my clients after a response has been filed to the OML complaint. I am not sure why you believe interviews are necessary before our response to the complaint has been submitted. If you will recall, I asked for an extension of time to file my response to this complaint. Part of the reason for the request, was so that I could obtain statements

from Trustees and District Staff who were present at the litigation non-meeting to confirm that it was in fact a non-meeting and not a meeting or a closed session.

In closing, I respectfully request that any further communications with my clients come through me. Further, I request that you and I schedule a telephone conference to discuss your investigation and how you would like to proceed.

I look forward to working with you to as you commence your investigation. I am confident you will find that there has not been a violation of the Open Meeting Law.

On Dec 14, 2017, at 5:42 PM, Caroline Bateman <CBateman@ag.nv.gov> wrote:

Good evening, Chairwoman Wong:

The Office of the Attorney General (OAG) is currently investigating an Open Meeting Law complaint under File No. 13897-257. A copy of the complaint is attached for your review.

As a part of my investigation, I would like to conduct a telephonic interview with you regarding the Board's meeting on November 15, 2017. You are welcome to have counsel attend the interview with you. If possible, I would like the interview to take place before December 28th. If you could provide me with a convenient date and time, I would appreciate it.

Please let me know if you have any questions or concerns.

Thank you,

Caroline

Caroline Bateman
Chief Deputy Attorney General
Boards and Open Government Division
Nevada Office of the Attorney General
T: 702.486.0621
F: 702.486.3773
CBateman@ag.nv.gov

<image001.png>

This communication, including any attachments, contains confidential information and is intended only for the individual or entity to whom it is addressed. Any review, dissemination, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and delete all copies of the original message and any attachments from your workstation and network mail system.

<OML (257) - Complaint.pdf>

Jason D. Guinasso
Partner



HUTCHISON & STEFFEN, PLLC
(775) 853-8746
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

KeyCite Red Flag - Severe Negative Treatment
Disapproved of by Nevada Yellow Cab Corp. v. Eighth Judicial Dist.
Court ex rel. County of Clark, Nev., March 8, 2007

105 Nev. 635

Supreme Court of Nevada.

Joseph I. CRONIN, Esq., Petitioner,

v.

The EIGHTH JUDICIAL DISTRICT COURT of
the State of Nevada, In and For the COUNTY
OF CLARK, and The Honorable Joseph S.
Pavlikowski, District Judge, Respondents,
and

Ralph Engelstad, Betty A. Engelstad, individually
and d/b/a Imperial Palace Hotel and Casino,
Las Vegas, Nevada; The Imperial Palace, Inc.,
a Nevada Corporation, Real Parties in Interest.

No. 19890.

Nov. 2, 1989.

Plaintiffs' attorney petitioned for writ of certiorari or mandamus to challenge order disqualifying him from representing plaintiffs. The Supreme Court, Rose, J., held that attorney's ex parte communications with management level employees of defendant permitted district court to disqualify him.

Petition denied.

Springer, J., filed dissenting opinion.

West Headnotes (8)

[1] Mandamus

⇒ Specific Acts

Mandamus is properly used to challenge orders disqualifying attorneys from representing parties in actions that are pending in district courts.

2 Cases that cite this headnote

[2] Attorney and Client

⇒ Disqualification in General

Attorney's ex parte communications with defendant's management level employees, director of corporate security, its director of human resources, and its chief of uniformed security about plaintiffs' case permitted district court to disqualify attorney from representing plaintiffs, even though attorney did not intentionally violate prohibition against ex parte communications and presented substantial, credible evidence that defendant was systematically destroying relevant evidence. Sup.Ct.Rules, Rule 182; ABA Rules of Prof.Conduct, Rules 4.2, 4.2 comment.

8 Cases that cite this headnote

[3] Attorney and Client

⇒ Disqualification in General

Attorney and Client

⇒ Power and Duty to Control

District courts have responsibility for controlling conduct of attorneys practicing before them and have broad discretion in determining whether disqualification is required in particular case.

6 Cases that cite this headnote

[4] Appeal and Error

⇒ Allowance of Remedy and Matters of Procedure in General

District court's determination whether to disqualify attorney will not be disturbed absent showing of abuse of discretion.

2 Cases that cite this headnote

[5] Attorney and Client

⇒ Disqualification in General

In situation involving disqualification of attorney, any doubt should be resolved in favor of disqualification.

7 Cases that cite this headnote

[6] Attorney and Client

↔ Disqualification in General

District court deciding whether to disqualify attorney must balance prejudices that will inure to parties as result of its decision.

5 Cases that cite this headnote

[7] Attorney and Client

↔ Relations, Dealings, or Communications with Witness, Juror, Judge, or Opponent

Neither attorney's negligence nor his ignorance of prohibition against ex parte communications with opposing party can justify violation of rule. Sup.Ct.Rules, Rule 182.

2 Cases that cite this headnote

[8] Attorney and Client

↔ Relations, Dealings, or Communications with Witness, Juror, Judge, or Opponent

Neither client's interest nor opponent's conduct justify communication with adverse party that lawyer knows is represented by counsel. Sup.Ct.Rules, Rule 182.

4 Cases that cite this headnote

Attorneys and Law Firms

**1150 *635 Joseph I. Cronin, Minden, for petitioner.

Bell & Young and Craig Hoppe, Barker, Gillock, Koning, Brown & Earley, Las Vegas, for real parties in interest.

*636 OPINION¹

ROSE, Justice:

On December 14, 1984, James and Joan Scanlon were paying guests at the Imperial **1151 Palace Hotel in Las Vegas. While they were in their room on that date, a man dressed in a "hotel service type" uniform appeared in the room, robbed the couple and raped Joan

Scanlon. Consequently, in 1986, the Scanlons commenced an action against the Imperial Palace Hotel and its owners (collectively referred to as Imperial Palace). On August 9, 1988, the Scanlons, represented by petitioner (Cronin), filed in the district court an amended complaint seeking damages from the Imperial Palace for, among other things, negligently failing to provide adequate security for the guests of the hotel.

Prior to the filing of the amended complaint, on either July 19, 1988, or July 21, 1988, Mick Shindell, the director of corporate security at the Imperial Palace, received a call from the hotel PBX that attorney Cronin was waiting to see him and to serve some papers on him.² Cronin was escorted to Shindell's office and served the papers. It appeared to Shindell that Cronin knew he was the director of corporate security, and Shindell assumed that *637 his position in the hotel management structure was the reason that he was being served with the papers. Shindell conversed with Cronin for about 10 minutes, and then walked Cronin to the front of the hotel. Before Cronin left the premises, Shindell told him that "somebody may call him," regarding the *Scanlon* case.

Shindell called Cronin's office in Minden the following day. Shindell told Cronin that he wanted to meet with him personally to discuss the *Scanlon* case. Cronin was receptive to the idea, and a meeting was scheduled. Shindell then mentioned his plan to meet with Cronin to two other Imperial Palace employees, Shirley Albury and Ed Steffen.

Cronin met with Shindell the following Wednesday at a restaurant in Las Vegas. The meeting lasted about one and one-half hours at that location, and continued for an additional hour at Shindell's home. During the meeting, Shindell told Cronin that he was ordered to destroy any documents in his files which indicated that the security department at the Imperial Palace needed improvement. Shindell also gave Cronin several documents from the Imperial Palace during that meeting. Shortly afterwards, Shindell told Shirley Albury and Ed Steffen of his meeting with Cronin. Shindell telephoned Cronin the following day, and informed him that Shirley Albury wanted to talk to him.

Shirley Albury, the director of human resources at the Imperial Palace, first met Cronin at Shindell's house in mid or late July of 1988, within one week of her conversation

with Shindell. Albury informed Cronin of her job title and duties at the Imperial Palace, and specifically asked Cronin if she could talk to him. According to Albury, Cronin did nothing to discourage her from talking to him. During her initial three-hour meeting with Cronin, Albury told Cronin that she was ordered to purge, and did purge from several personnel files, information that might harm the Imperial Palace in the *Scanlon* case. According to Albury, the files were purged during the hotel's process of responding to a request for production of documents.³

Albury met with Cronin on four subsequent occasions to discuss various aspects of the *Scanlon* case. Albury gave Cronin a 4-5 inch stack of Imperial Palace documents during the course of those meetings. The final meeting occurred at her home on September 8, 1988, when Cronin stopped by her home, unannounced, while she, Shindell and others were present. During the two hours that Cronin was in Albury's house, Cronin showed Albury and Shindell the draft of a document that he intended to file in court.

****1152 *638** Ed Steffen, the chief of uniformed security at the Imperial Palace, met with Cronin on two occasions. The first meeting was arranged by Shindell at Steffen's request. Although Steffen met with Cronin at Shindell's home for about three hours, the two talked about the *Scanlon* case for only about fifteen minutes. The second meeting with Cronin was not scheduled; Steffen was simply present at Shindell's house when Cronin stopped by. They discussed the *Scanlon* case, and Cronin questioned Steffen regarding certain Imperial Palace documents. Steffen admitted giving documents to Shindell, and assumed that the documents were forwarded to Cronin.

On September 18, 1988, the Scanlons filed in the district court a motion to strike the answer of the Imperial Palace to the amended complaint, and for the entry of judgment in favor of the Scanlons due to the alleged willful destruction of evidence by the Imperial Palace. That motion alleged that the Imperial Palace had ordered hotel employees to purge embarrassing material from the hotel's files. In particular, the motion alleged that all security incident reports and crime reports predating January 1, 1983, were destroyed. The motion also alleged that personnel files concerning security employees were purged of negative evaluations and other material that might reflect negatively on the security in the hotel.

The Imperial Palace opposed the motion to strike, and categorically denied destroying any documents. Further, it labelled as untrue deposition testimony which indicated that documents were destroyed, and stated that other deposition testimony indicated that copies of the allegedly destroyed documents were still in existence.

In September of 1988, during the pendency of the motion to strike, the Imperial Palace filed in the district court a motion for a temporary restraining order and for a preliminary injunction. In that motion, the Imperial Palace asserted that Cronin acted improperly when he communicated with its employees without the consent of its attorneys. *See* SCR 182 (a lawyer is prohibited from communicating with an adverse party who is represented by an attorney without the consent of the attorney). Accordingly, the Imperial Palace asked that Cronin be enjoined from engaging in any further *ex parte* communications with its employees. The district court issued a restraining order on September 20, 1988. Cronin opposed the motion for a preliminary injunction.

On January 9, 1989, during the pendency of the request for an injunction, the Imperial Palace filed in the district court a motion to disqualify Cronin from representing the Scanlons in the action below. The Imperial Palace asserted that, prior to his meetings ***639** with Cronin, Shindell had been present in meetings where settlement strategies in the *Scanlon* case were discussed. Therefore, the Imperial Palace argued that it was irreparably harmed by Cronin's unauthorized interviews because of the "actual and the potential disclosure of attorney-client and work product disclosures" that occurred during those interviews.

[1] Cronin opposed the motion to disqualify arguing, among other things, that considerations of public policy excused his actions. On March 14, 1989, after a hearing, the district court entered an order granting the motion to disqualify. This proceeding followed.⁴

[2] Cronin contends in his petition that the district court incorrectly determined that he communicated with an adverse party when he spoke with the employees of the Imperial Palace regarding the *Scanlon* case. Cronin asserts that the employees contacted him initially, and that he did not speak with employees of the Imperial Palace who had managing authority for the hotel. Further, he states that none of the employees he interviewed had any authority to

control the litigation below. Therefore, Cronin contends that the district court erred in determining that he violated SCR 182 when he interviewed the employees of the Imperial Palace. See **1153 *Wright by Wright v. Group Health Hosp.*, 103 Wash.2d 192, 691 P.2d 564, 570 (1984) (the provisions of DR 7-104(A)(1), the predecessor to SCR 182, did not prohibit a lawyer representing the plaintiff in a medical malpractice action from interviewing, *ex parte*, "nonspeaking/managing agent employees" of the defendant).

The Imperial Palace correctly notes, however, that the *Wright* case interpreted DR 7-104(A)(1). That rule was superseded in Nevada by SCR 182, which states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

The Nevada Rules of Professional Conduct are taken from the ABA Model Rules of Professional Conduct. See SCR 150(1). Although the preamble and comments to the Model Rules were *640 not adopted by this court, those materials "may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct, unless there is a conflict between the Nevada Rules and the preamble or comments." SCR 150(2). SCR 182 was taken verbatim from Model Rule 4.2. Comment 2 to the Model Rule 4.2 provides in pertinent part:

In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is

represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule....

[3] [4] [5] Initially, we note that the district courts have the responsibility for controlling the conduct of attorneys practicing before them. See *Trust Corp. of Montana v. Piper Aircraft Corp.*, 701 F.2d 85 (9th Cir.1983); *Boyd v. Second Judicial District Court*, 51 Nev. 264, 274 P. 7 (1929) (district court has inherent power to enjoin an attorney from representing conflicting interests). Further, the district courts have broad discretion in determining whether disqualification is required in a particular case, and that determination will not be disturbed by this court absent a showing of abuse of that discretion. See *Schloetter v. Railoc of Indiana, Inc.*, 546 F.2d 706 (7th Cir.1976). See also *Collier v. Legakes*, 98 Nev. 307, 646 P.2d 1219 (1982) (disqualification of prosecutor's office rests in the discretion of the district court); *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981) (mandamus will issue to control an arbitrary or capricious exercise of discretion by a district court). Finally, in a situation involving the disqualification of an attorney, any doubt should be resolved in favor of disqualification. See *Hull v. Celanese Corporation*, 513 F.2d 568 (2nd Cir.1975).

[6] Although the district court has wide latitude in determining whether to disqualify counsel from participating in a given case, its discretion in such cases is not unlimited. The district court must balance the prejudices that will inure to the parties as a result of its decision. See *641 *Shelton v. Hess*, 599 F.Supp. 905 (S.D. Tex.1984). Therefore, to prevail on a motion to disqualify opposing counsel for an alleged ethical violation, the moving party must first establish "at least a reasonable possibility that some specifically identifiable impropriety did in fact occur." *Id.* at 909. Moving counsel must also establish that "the likelihood of public suspicion or obloquy outweighs the social interests which will be served by a lawyer's continued participation in a particular case." *Id.*

[7] In the present case, it is undisputed that Cronin had repeated and pervasive *ex parte* communications with management level employees of the Imperial Palace to discuss the *Scanlon* case. He met with Mick Shindell twice, Shirley Albury five times and Ed Steffen twice. He

received **1154 extensive records from the three. Cronin admitted in a deposition that he knew that Mick Shindell was the executive in charge of the security department at the Imperial Palace prior to his first meeting with Shindell. Cronin also admitted in an affidavit filed below that he had interviewed three current *management level employees* of the Imperial Palace. Those documents belie Cronin's statement in this proceeding that he communicated only with "non-speaking/managing" employees of the Imperial Palace. It is clear that Cronin knew that each of the persons he interviewed was a high-ranking employee of the Imperial Palace. Although we do not believe that Cronin intentionally violated SCR 182 when he met with the employees of the Imperial Palace, neither Cronin's negligence nor his ignorance of the rule can justify his conduct. See *In re Lewelling*, 296 Or. 702, 678 P.2d 1229, 1230 (1984). Thus, the district court was clearly confronted with "at least a reasonable possibility" that a specifically identifiable impropriety did occur.

[8] The second determination, whether the likelihood of public suspicion or obloquy outweighs the social interests that would be served by Cronin's continued participation in the *Scanlon* case, is not as easy as the first. This court has previously characterized as reprehensible the conduct of an attorney who engages in *ex parte* communications with an opposing party who is represented by counsel. See *Holiday Inn v. Barnett*, 103 Nev. 60, 732 P.2d 1376 (1987). As outlined at the beginning of this opinion, however, Cronin was presented with substantial amounts of credible evidence that the Imperial Palace was systematically destroying evidence relevant to the *Scanlon* case. Indeed, if the allegations of wrongdoing by the Imperial Palace contain even a scintilla of truth, public suspicion and obloquy could be fostered by Cronin's *642 disqualification. We note, however, that by failing to disclose evidence of the Imperial Palace's alleged fraud to the district court at the earliest opportunity, Cronin may have become an unwitting participant in that alleged fraud. In this regard, we note that upon receiving evidence of the alleged fraud, Cronin apparently increased his demand for settlement from \$750,000 to \$5,000,000. Although this increased settlement demand was undoubtedly prompted by the allegedly improper acts of the Imperial Palace, and was almost certainly in the best interests of the Scanlons, neither a client's interests nor an opponent's conduct justify communication with an adverse party that a lawyer

knows is represented by counsel. See *Lewelling*, 678 P.2d at 1230; *In re Schwabe*, 242 Or. 169, 408 P.2d 922 (1965).

The disqualification of Cronin may impose a substantial economic penalty on him as the dissent in this case points out. And the real parties in interest may have committed acts more serious than those of Cronin. However, it is our obligation to review and act upon Cronin's conduct, a member of the Nevada Bar. We are not now called upon to determine the violations of the real parties in interest or the penalties that should be imposed upon them. That is initially left to other public officials and courts. Although Cronin was faced with a difficult situation and conflicting loyalties, we cannot overlook conduct that clearly violates the letter and spirit of SCR 182.

Finally, we note that Cronin does not dispute the allegation of the Imperial Palace that prior to meeting Cronin, Mick Shindell was present at meetings with attorneys for the Imperial Palace at which the *Scanlon* case was discussed. This circumstance created a great potential for disclosure of privileged material during Shindell's meetings with Cronin, and thus constitutes another factor that the district court could have used in determining that the nature and extent of Cronin's conduct outweighed the Scanlons' interest in being represented by counsel of their choice. See *Shelton*, 599 F.Supp. at 909.

In light of the above, we conclude that the district court properly balanced the interests of the parties below when it resolved the motion to disqualify Cronin from representing the Scanlons. The circumstances of this case reveal no abuse of **1155 discretion by the district court; therefore, we are constrained to deny this petition.⁵

YOUNG, C.J., and STEFFEN and MOWBRAY, JJ., concur.

SPRINGER, Justice, dissenting:

It is alarming to me that Imperial Palace, guilty of the kinds of wrongdoing attributed to its management, should be successful in having Mr. Cronin eliminated as counsel in this case. Imperial Palace claims no prejudice that might result from Mr. Cronin's continuing as counsel in this case and paradoxically must rest its case on the collateral claim of Mr. Cronin's wickedness in violating our rule, SCR 182.

The severance of the attorney-client relationship, the denial to Mr. Cronin's clients of the right to counsel of their choosing, does not seem to me to bear any relationship to what, by all accounts, was at worst an unintentional violation of our rule. Aside from the interests of the clients in this case, it does not seem to me that summary removal of counsel for the plaintiffs in this case is an appropriate penalty to be imposed upon the attorney given even the worst possible interpretation of his conduct in this case.¹

Rather than sever the attorney-client relationship in this case, thereby punishing both client and attorney, I would simply refer the matter to the Bar. If Mr. Cronin is claimed to be guilty of an unintentional rule violation, it should be dealt with in the same manner as other ethical and disciplinary matters are dealt with. To allow the trial court's order to stand is, to my mind, to permit a great and regrettable injustice to both Mr. Cronin and his clients.

All Citations

105 Nev. 635, 781 P.2d 1150, 58 USLW 2326

Footnotes

- 1 Although the petition names both Joseph Cronin and Louis Wiener, Jr., as petitioners, the petition is signed only by Cronin. Further, only Cronin submitted an affidavit supporting the petition, and the petition contains arguments that are relevant only to Cronin. Therefore, it does not appear that Louis Wiener is challenging the order of disqualification in this case.
- 2 The facts regarding the employees of the Imperial Palace are taken from the depositions of those employees.
- 3 There is no indication in the record that the attorneys representing the Imperial Palace had any knowledge of the alleged destruction of documents.
- 4 Mandamus is used properly to challenge orders disqualifying attorneys from representing parties in actions that are pending in the district courts. *See Collier v. Legakes*, 98 Nev. 307, 646 P.2d 1219 (1982).
- 5 Cause appearing, we deny the parties' respective request for sanctions.
- 1 We cannot be blind to the fact that removal of Mr. Cronin as counsel in this case will very probably result in a loss to him of fees in the hundreds of thousands of dollars. Such a "fine" is painful indeed as a consequence for Mr. Cronin's receiving information about Imperial Palace's attempt to corrupt the judicial system. Also, it does not seem fair to me that Mr. Cronin should be punished at the behest of Imperial Palace. The wrongdoer goes unpunished; the discoverer of the wrongdoing is punished by being removed from the case. This is not right.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by William D. and Barbara S. Totherow, v. Rivier COLLEGE, William J. Farrell and Therese Larochelle., N.H. Super., February 20, 2007

118 Nev. 943
Supreme Court of Nevada.

Dena PALMER, Appellant,
v.
PIONEER INN ASSOCIATES, LTD.,
a Limited Partnership, Respondent.

No. 38213.
|
Dec. 27, 2002.

The United States Court of Appeals for the Ninth Circuit certified questions concerning application of Nevada Supreme Court rule governing lawyer's ex parte contacts. The Supreme Court held that: (1) managing-speaking agent test applies to rule providing that in representing a client, a lawyer shall not communicate about subject of representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has consent of other lawyer or is authorized by law to do so, and under that test, a party is an employee who has legal authority to bind the corporation in a legal evidentiary sense, and (2) Nevada does not follow portion of ABA Model Rule's former comment providing that contact is barred with an organization's employee whose admission may constitute an admission on part of organization, nor does it follow the 2002 version of the comment which provides that in representing a client, a lawyer shall not communicate about subject of representation with a person lawyer knows to be represented by another lawyer in the matter, unless lawyer has consent of other lawyer or is authorized to do so by law or a court order.

Questions answered.

West Headnotes (2)

[1] **Attorney and Client**
↔ Relations, Dealings, or Communications with Witness, Juror, Judge, or Opponent

Managing-speaking agent test applies to rule providing that in representing a client, a lawyer shall not communicate about subject of representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has consent of other lawyer or is authorized by law to do so, and under that test, a party is an employee who has legal authority to bind the corporation in a legal evidentiary sense. Sup.Ct. Rules, Rule 182.

6 Cases that cite this headnote

[2] **Attorney and Client**
↔ Relations, Dealings, or Communications with Witness, Juror, Judge, or Opponent

Nevada does not follow portion of ABA Model Rule's former comment providing that contact is barred with an organization's employee whose admission may constitute an admission on part of organization, nor does it follow the 2002 version of the comment which provides that in representing a client, a lawyer shall not communicate about subject of representation with a person lawyer knows to be represented by another lawyer in the matter, unless lawyer has consent of other lawyer or is authorized to do so by law or a court order. ABA Rules of Prof. Conduct, Rules 4.2, 4.2 comment.

7 Cases that cite this headnote

Attorneys and Law Firms

**1238 *944 Hardy & Associates and Ian E. Silverberg, Reno, for Appellant.

McDonald Carano Wilson LLP and Miranda Du and Pat Lundvall, Reno, for Respondent.

Bradley Drendel & Jeanney, Reno, for Amicus Curiae Nevada Trial Lawyers Association.

Rob W. Bare, Bar Counsel, and Felicia Galati, Assistant Bar Counsel, Las Vegas, for Amicus Curiae State Bar of Nevada.

BEFORE THE COURT EN BANC.

OPINION

PER CURIAM:

In this matter, we are asked by the United States Court of Appeals for the Ninth Circuit to answer two certified questions:

1. In applying Supreme Court Rule 182 to an employee of a represented corporation, does Nevada apply the portion of the commentary to Model Rule 4.2 barring ex parte contact with an employee "whose statement may constitute an admission on the part of the organization"?

*945 2. If so, does Nevada interpret that portion of the commentary by analogy to Fed.R.Evid. 801(d)(2)(D), by application of agency principles, or by a different analysis?

These questions concern the interpretation of SCR 182, which is based on ABA Model Rule 4.2, as applied to employees of organizational clients. The rule is commonly referred to as the "no-contact" rule.

We note that while the matter has been pending, the comment language at issue was deleted in the 2002 amendments to the ABA Model Rules, and new language was adopted. As we never formally adopted the comments to the Model Rules, we may interpret SCR 182 according to the new version of the comment, the old version of the comment, or some other basis.

We also note that a literal reading of the Ninth Circuit's questions could yield a result that offers no guidance: if we decide that the language at issue does not apply, then the answer to the first question is "no" and the second question need not be addressed, but the Ninth Circuit would still not know what test Nevada uses in applying SCR 182 to an employee of a represented organization. We therefore rephrase the first question as follows, and delete the second question:

What test does Nevada use in applying Supreme Court Rule 182 to an employee of a represented organization?

The federal district court determined that if an employee's statement qualifies as a party-opponent admission under FRE 801(d)(2)(D), then contact with the employee falls within SCR 182's prohibition.¹ We conclude that the better test is the "managing-speaking agent" test. We adopt this test, as set forth in this opinion, in determining whether contact with an employee of a represented organization is barred by SCR 182.

FACTS

Dena Palmer applied for work as a waitress at the Pioneer Inn Hotel and Casino in Reno, Nevada. She allegedly also discussed possible positions as a deli food server and a restaurant supervisor with Greg Zamora, Food and Beverage Director. According to Palmer, Zamora told her that she would be hired as a restaurant supervisor, but when she arrived for work, Zamora told her she had been rejected by one of Pioneer's general managers because she was pregnant. Palmer allegedly told him that she believed this was unlawful discrimination, but Zamora confirmed that she would not be hired.

**1239 Pioneer asserted that Palmer was never hired because she did not complete Pioneer's standard hiring process. This process *946 begins with an initial screening by Pioneer's human resources department, followed by an interview with the department for which the applicant wishes to work. At that interview, an offer of employment may be extended, conditional upon completion of the hiring process. Upon acceptance of a conditional offer, the applicant is required to attend an orientation, complete new hire forms, and obtain a police work card. Pioneer argued that since Palmer completed only the first two steps, initial screening and an interview with the appropriate department, she was never actually hired. Palmer essentially maintained that she attempted to complete the hiring process, but was prevented from doing so when Zamora revoked the offer of employment and told her she would not be hired because of her pregnancy.

Pioneer also asserted that only a deli food server position was available at the time Palmer applied, and that Palmer rejected this position because the required hours conflicted with her other job as a waitress at the Olive Garden. According to Pioneer, as no positions for a waitress or restaurant supervisor were available at the time, Palmer

could not have been offered these positions. In contrast, Palmer claimed that Zamora gave her the restaurant menus and a pamphlet on supervisor responsibilities to study, and told her the dress code requirements for the position. Palmer alleged that in reliance on the offer of this better position, she quit her job at the Olive Garden and purchased clothing suitable for a supervisor. Additionally, Palmer argued that she would never have quit her job at the Olive Garden if she did not believe that she had been hired.

When Palmer was not hired, she retained counsel almost immediately. Palmer's attorney informed Pioneer by letter dated February 27, 1997, that he intended to file an action on her behalf. In early March 1997, Palmer lodged a complaint with the Equal Employment Opportunity Commission.² Pioneer retained counsel to represent it in the matter, and counsel sent a letter to Palmer's attorney informing him of the representation.

In April 1997, George Kapetanakis, then an executive sous chef at Pioneer,³ contacted Palmer's attorney. Following their discussion, Kapetanakis signed an affidavit, prepared by Palmer's attorney, which stated: "during the month of January, 1997, I witness[ed] Mr. Greg Zamora interviewing ... [Palmer] I inquired of Mr. Zamora whether he intended to hire [her] at *947 which time Mr. Zamora told me that he had already hired her." Kapetanakis's job was a supervisory position that involved running Pioneer's main kitchen.

Palmer received a right-to-sue letter from the EEOC. On July 9, 1997, Palmer filed an action in federal court alleging pregnancy and gender discrimination under Title VII,⁴ and pendent state law claims.

Pioneer moved to disqualify Palmer's counsel under SCR 182 based on his ex parte contact with Kapetanakis.⁵ The federal magistrate judge found that Kapetanakis was a supervisor who had responsibility for interviewing and hiring cooks, dishwashers, and sous chefs, although not waitresses, servers, or restaurant supervisors. The magistrate concluded that, even though Kapetanakis was not involved in hiring waitresses, food servers, or restaurant supervisors (any of the positions Palmer claims to have discussed with Zamora), "[b]ecause his job responsibilities **1240 included hiring employees, he was in a position to make statements concerning the

hiring policies of Pioneer." The magistrate then held that counsel's contact with Kapetanakis constituted ex parte contact with a represented party under SCR 182, and sanctioned counsel by excluding the affidavit obtained by the contact, precluding Kapetanakis from testifying about the information contained in the affidavit, and awarding fees and costs of \$2,800 to Pioneer. After Palmer filed an objection, the federal district court affirmed the magistrate's order in its entirety.

Before trial, the district court dismissed two of Palmer's claims on summary judgment. At trial, the jury found for Pioneer. Palmer appealed the summary judgment, certain rulings at trial, and the order imposing sanctions for her counsel's ex parte contact. The questions certified by the Ninth Circuit concern only the sanctions order.

DISCUSSION

SCR 182, Model Rule 4.2 and Comments
SCR 182 provides:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the *948 lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

This rule was adopted verbatim from the original version of ABA Model Rule 4.2,⁶ which in turn was copied almost verbatim from Model Code of Professional Responsibility DR 7-104(A)(1). Before that, the same general concept was contained in Canon 9 of the ABA Canons of Professional Ethics.⁷

The primary purpose of the rule is to protect the attorney-client relationship from intrusion by opposing counsel.⁸ It protects parties from unprincipled attorneys and safeguards the attorney-client privilege. It also promotes counsel's effective representation of a client by routing communication with the other side through counsel, who can present the information in a way most favorable to the client.⁹ Sanctions for violating the rule have included disqualification of counsel, monetary sanctions, exclusion of information obtained by ex parte contact, prohibition

on the use of such information at trial, and production to the organization's counsel of information obtained by ex parte contact, including all or part of the work product connected with the contact.¹⁰

The rule's protections undisputedly extend to organizational parties, who must act through their directors and employees.¹¹ Accordingly, at least some of the organization's agents must be viewed as the equivalent of a "party" for the rule to have any effect.¹² A conflict between policies arises, however. On one hand, *949 the rule's protective purposes are best served by defining this pool of agents broadly. On the other hand, defining the pool more narrowly fosters the use of informal discovery methods, which further the **1241 prompt and cost-effective resolution of disputes. Moreover, a narrower definition affords a reasonable opportunity for pre-litigation investigation under Rule 11.¹³ The question then becomes how to apply the rule in a way that best balances the competing policies.

The ABA has attempted to provide some guidance in this area in its comments to the Model Rules. SCR 150(2) explains that the comments to the ABA Model Rules were not adopted by this court, but can be consulted for guidance. In our two published opinions on SCR 182, we have considered the comments, as they stood at the time of those decisions, in interpreting the rule. In *Cronin v. District Court*,¹⁴ we followed a portion of the 1983 comments providing that communications with managerial-level employees of a corporate client are included within SCR 182's scope. In the other case, *In re Discipline of Schaefer*,¹⁵ we rejected a portion of the 1995 comments that suggested that a lawyer representing himself in a matter was not included within the rule's scope.

The pertinent part of the 1995 comments to Model Rule 4.2, in effect at the time of the federal district court's decision and the Ninth Circuit's certification order,¹⁶ is as follows, with emphasis added:

In the case of an organization, this Rule prohibits communications by a lawyer for another person or entity concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with *any other person* whose

act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or *whose statement may constitute an admission on the part of the organization*. If an agent or employee of the organization is represented in the matter by *950 his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f) [concerning propriety of a lawyer's request that a person other than a client refrain from voluntarily giving information].¹⁷ As noted above, the emphasized portion of the comment is at issue in this case.

The comments to Model Rule 4.2 were substantially revised in the 2002 amendments to the Model Rules,¹⁸ well after the conduct in this case took place, and after the certification order was entered. While they were available in draft form at the time of the certification order and when the parties filed their briefs with this court, they had not yet been approved. As amended, the pertinent comment reads:

In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's **1242 lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.¹⁹

The amendment deletes the portion of the earlier comment at issue in this matter. According to the Ethics 2000 Commission's Report overview, the amendments to Rule 4.2 were part of the commission's effort to "[c]larify] existing rules and Comment to *951 provide better guidance and explanation to lawyers," specifically, to "clarify] application of the Rule to organizational clients."²⁰ In particular, the Reporter's Explanation of

Changes states that the "admission" clause was deleted because it had been misapplied to situations when an employee's statement could be admissible against the organizational employer, when the clause was only ever intended to encompass those few jurisdictions with a law of evidence providing that statements by certain employees of an organization were not only admissible against the organization but could not thereafter be controverted by the organization.²¹

The recent amendments, and the reasons for them, are relevant to our consideration of the issue, particularly because the former comment was never binding on Nevada lawyers, and so retroactivity is not a concern.

Various tests for determining which employees are included within the rule's scope

Many competing policies must be considered when deciding how to interpret the no-contact rule as applied to organizational clients: protecting the attorney-client relationship from interference; protecting represented parties from overreaching by opposing lawyers; protecting against the inadvertent disclosure of privileged information; balancing on one hand an organization's need to act through agents and employees, and protecting those employees from overreaching and the organization from the inadvertent disclosure of privileged information, and on the other hand the lack of any such protection afforded an individual, whose friends, relatives, acquaintances and co-workers may generally all be contacted freely; permitting more equitable and affordable access to information pertinent to a legal dispute; promoting the court system's efficiency by allowing investigation before litigation and informal information-gathering during litigation; permitting a plaintiff's attorney sufficient opportunity to adequately investigate a claim before filing a complaint in accordance with Rule 11; and enhancing the court's truth-finding role by permitting contact with potential witnesses in a manner that allows them to speak freely.

Various courts have formulated several tests for determining who is encompassed within the no-contact rule. Most of the tests attempt to interpret the former comment to Model Rule 4.2. At one extreme is the "blanket" test, which prohibits contact with *952 current and former employees of an organizational client; at the other is the "control group" test, which covers only high-

level management employees. Several tests fall in the middle, including a party-opponent admission test, a case-by-case balancing test, and a "managing-speaking agent" test. Finally, a test crafted by the New York Court of Appeals expressly disclaims any reliance on the former comment, but is admittedly based on the "managing-speaking agent" test.

Blanket test

The blanket test prohibits all contact, and appears to have been adopted in very few published decisions. A federal district court **1243 has concluded that a blanket rule prohibiting all contact sets a bright-line rule that is easily followed and enforced.²² That court also opined that depositions were more "reliable and ethically sound" than informal interviews.²³

The primary advantage of this test is its clarity: no employees of a represented organization may be contacted by opposing counsel. It also offers the most protection for the organization. The cost of these advantages, however, is very high. A complete prohibition on informal ex parte contact greatly limits, if not eliminates, counsel's opportunity to properly investigate a potential claim before a complaint is filed, as required by Rule 11. Also, the rules of civil procedure, especially the discovery rules, are designed to afford parties broad access to information, and informal interviews are a cost-effective way of gathering facts, as opposed to more expensive depositions, which preserve facts.²⁴

Party-opponent admission test

The test based on the hearsay rule appears to encompass almost as many employees as the blanket test, and is the test adopted by the federal district court in this matter. This test encompasses within the ethical rule any employee whose statement might be admissible as a party-opponent admission under FRE 801(d)(2)(D) *953 and its state counterparts.²⁵ According to the evidence rule, an employee's statement is not hearsay, and thus is freely admissible against the employer, if it concerns a matter within the scope of the employee's employment, and is made during the employee's period of employment.

The courts adopting the party-opponent admission test have concluded that the former comment's reference to "admissions" was clearly meant to incorporate the rules

of evidence governing admissions. In *Brown v. St. Joseph County*,²⁶ an Indiana federal district court quoted a leading treatise in reasoning that the evidentiary test gave “a sound practical cast to the rule: those who can hurt or bind the organization *with respect to the matter at hand* are off limits except for formal discovery or except with the consent of the entity's lawyer.”

This test's primary advantage is that it protects the organization from potentially harmful admissions made by its employees to opposing counsel, without the organization's counsel's presence. The organization's interest in this regard is particularly strong because such admissions are generally recognized as a very persuasive form of evidence.²⁷

The drawback of this test is that it essentially covers all or almost all employees, since any employee could make statements concerning a matter within the scope of his or her employment, and thus could potentially be included within the rule.²⁸ Thus, the party-opponent admission test can effectively serve as a blanket test, thus frustrating the **1244 search for truth.²⁹ An attorney attempting to comply with Rule 11's requirements would be faced with two unenviable choices. The first option would be not to contact persons who might be the best, if not the only, source of corroborating information. This option would ensure that the attorney complies with SCR 182's prohibitions, but would result in the attorney's failure to comply with Rule 11. The second option *954 would be for the attorney to second-guess what an employee might say, in an attempt to determine whether contact might be permissible, which would result in the attorney risking an SCR 182 violation.³⁰

In addition, a party admission may be challenged through impeachment of the witness, by presenting contradictory evidence, or by explaining the admission.³¹ Accordingly, it is not clear that this test properly balances the competing policies.

Managing-speaking agent test

The managing-speaking agent test appears to have evolved before the tests discussed above, in response to a United States Supreme Court case discussing the scope of the attorney-client privilege as applied to an organizational client. In *Upjohn Co. v. United States*,³²

the Court held that the privilege was not restricted to an organization's “control group.” Rather, the Court held that mid- and even low-level employees could have information necessary to defend against a potential claim, and thus communications between such employees and counsel were protected by the privilege. While acknowledging that the *Upjohn* opinion did not expressly apply to the no-contact rule, the courts adopting the managing-speaking agent test in *Upjohn*'s wake reasoned that the protection afforded an organization under the no-contact rule should be commensurate with that afforded by the attorney-client privilege.³³ At the same time, relying on dicta in *Upjohn* stating that confidential communications, not facts, were entitled to protection, these courts determined that the rule should not be expanded so broadly that informal investigation through ex parte interviews was restricted too severely.

Some courts adopting this test have done so without reference to Model Rule 4.2's former comment, which includes three categories of employees: those with managerial responsibility, those whose acts or omissions could be imputed to the organization to establish liability, or those whose statements could constitute an admission by the organization.³⁴ Other courts applied the former *955 comment in determining that the test best interpreted one or more categories of employees listed in the former comment.³⁵ No court appears to have adopted precisely the same statement of the test.³⁶

In all of its formulations, the managing-speaking agent test restricts contact with **1245 those employees who have “speaking” authority for the organization, that is, those with legal authority to bind the organization.³⁷ Which employees have “speaking” authority is determined on a case-by-case basis according to the particular employee's position and duties and the jurisdiction's agency and evidence law. This is the essence of the test as set forth in the most-cited case adopting it, the Washington Supreme Court's opinion in *Wright by Wright v. Group Health Hospital*.³⁸

Beyond this common factor, the test has sometimes included other employees. For example, in jurisdictions with an evidence rule similar to FRE 801(d)(2)(D), courts have applied the evidence rule in determining which employees “speak” for the organization, thus yielding a

result similar to the party-opponent admission test.³⁹ Also, some courts have used this test to interpret one or another of the categories in Model Rule 4.2's former comment, but have also referred to the other categories, including those employees whose conduct could be imputed to the organization.⁴⁰

Courts adopting this test have concluded that it best balances the competing policies of protecting the organizational client from overreaching by opposing counsel through direct contact with its employees and agents, and the adverse attorney's need for information in the organization's exclusive possession that *956 may be too expensive or impractical to obtain through formal discovery.⁴¹ They also note, relying on *Upjohn*'s dicta, that the rule's purpose is not to protect an organization from the revelation of prejudicial facts, thus disapproving of the party-opponent admission test.⁴²

The test's primary drawback is its lack of predictability.⁴³ As noted above, several of the courts purporting to adopt the test have stated and applied it very differently. In addition, because the test relies on a particular jurisdiction's agency and evidence law, its application may yield divergent results.

Control group test

The final test that interprets the former comment to the rule is the "control group" test. This test encompasses only those top management level employees who have responsibility for making final decisions, and those employees whose advisory roles to top management indicate that a decision would not normally be made without those employees' advice or opinion.⁴⁴

This test serves the policies of preserving the availability of witnesses, reducing discovery costs by permitting informal interviews of a broad range of employees, and affording the best opportunity for pre-litigation fact investigation.⁴⁵ The test has become disfavored following the *Upjohn* decision, because the control group test is narrower than the attorney-client privilege rule approved in that case.⁴⁶ Also, it lacks predictability because it is not always clear which employees fall within the "control group."⁴⁷

Case-by-case balancing test

A few courts have adopted a case-by-case balancing approach.⁴⁸ Under this test, the **1246 particular facts of the case must be examined to determine what informal contacts may be appropriate in light *957 of the parties' specific needs. Factors to be considered are the claims asserted, the employee's position and duties, the employer's interests in protecting itself, and the alternatives available to the party seeking an informal interview.⁴⁹ Results under the test have varied.⁵⁰ The pertinent cases do not address counsel's difficulty in applying this test before an actual interview, to determine whether the interview might later be found to be a rule violation. Rather, it appears that this test has been applied only when a lawyer seeks prospective guidance from a court, and it has not been used in making an after-the-fact determination of whether an attorney has violated the ethical rule. While this approach offers a fact-specific application of the no-contact rule and has some practical appeal in those situations when counsel seeks court guidance before making an ex parte contact, it is not at all predictable and does not have a sound analytical basis. Also, ex parte contact is most useful and necessary in the pre-litigation stage, when counsel is complying with his or her Rule 11 obligation to investigate whether a valid claim exists. A test that requires court intervention before contact may be made does not further the purpose of permitting an adequate investigation under Rule 11. Accordingly, while the balancing approach may be useful in certain limited situations, it cannot feasibly be applied as a universal standard for interpreting SCR 182.

New York test

Finally, an additional test has been formulated by the New York Court of Appeals in *Niesig v. Team I*,⁵¹ which explicitly rejects reliance on the former comment. The test is often referred to as the "alter ego" test.⁵² The court rejected the blanket test as too broad, and the control group test as too narrow. It also expressed dissatisfaction with the existing intermediate tests, because they were too uncertain in application. Instead, while acknowledging that any non-blanket rule engendered some uncertainty, the court formulated its own test:

*958 The test that best balances the competing interests, and incorporates the most desirable elements

of the other approaches, is one that defines "party" to include corporate employees whose acts or omissions in the matter under inquiry are binding on the corporation (in effect, the corporation's "alter egos") or imputed to the corporation for purposes of its liability, or employees implementing the advice of counsel. All other employees may be interviewed informally.⁵³

In particular, the court noted that its test "would clearly permit direct access to employees who were merely witnesses to an event for which the corporate employer is sued."⁵⁴ This test has since been adopted by several courts.⁵⁵

One advantage of the New York test is that it balances the protection afforded to the organization with the need for informal investigation, although it may go too far in protecting the organization by including **1247 those employees whose conduct may be imputed to the organization. Its disadvantage, as admitted by the *Niesig* court, is that any non-blanket rule has an element of unpredictability, and so in close situations it may be difficult to determine whether a particular employee is within its scope. In particular, as with the managing-speaking agent test on which the New York test is based, it may be difficult to determine which employees have sufficient authority to "bind" the organization.

The arguments of the parties and amici

Palmer first argues that the "admission" clause of the former comment should not be followed.⁵⁶ She contends that it is difficult for an attorney who is attempting to comply with Rule 11 while not violating ethical rules. According to Palmer, the former comment thus chills proper representation of clients against an organizational opponent. Instead, Palmer advocates the New York test. In the event this court decides to apply the "admission" clause, Palmer argues that the party-opponent admission test relied upon by the district court is too broad, and that the managing-speaking agent test should be adopted.

*959 Pioneer argues that this court should apply the "admission" clause, and relies on this court's citation to the comments generally in *Cronin* and *Schaefer*.⁵⁷ Pioneer further argues that the federal district court appropriately applied the party-opponent admission test, because any other test renders the "admission" clause superfluous.

Pioneer also relies on the *Restatement (Third) of the Law Governing Lawyers*, which provides that attorneys are prohibited from contacting employees whose statements "would have the effect of binding the organization with respect to proof of the matter."⁵⁸ Pioneer argues that this language is the same as applying the party-opponent admission test to interpret the "admission" clause.

The *Restatement* is considerably narrower, however, because the party-opponent admission test does not bind the organization to the admission—while the admission is admissible, the organization is free to offer evidence contradicting the admission and/or impeaching the party who made it.⁵⁹ The comments to the *Restatement* itself indicate that it in no way advocates a standard based on the party-opponent admission rule, but rather that its proposed rule follows the New York approach.⁶⁰

In its amicus brief, the Nevada Trial Lawyers Association argues that the "admission" clause should not be followed, and cites heavily to the Ethics 2000 Commission's reports and drafts.⁶¹ In the event this court decides to follow the "admission" clause, the NTLA essentially repeats Palmer's arguments that a managing-speaking agent test should be adopted rather than the party-opponent admission test.

Finally, in its amicus brief, the state bar recommends that the "admission" clause be rejected, and that we adopt the test crafted by the New York Court of Appeals. The state bar strongly argues that the policies behind the rule are best served by the New York test. In a final paragraph, the state bar recommends that in the event this court applies the "admission" clause, the managing-speaking agent test would be preferable.

*960 *Analysis*

[1] We conclude that the managing-speaking agent test, as set forth below, best **1248 balances the policies at stake when considering what contact with an organization's representatives is appropriate. The test protects from overbearance by opposing counsel those representatives who are in a position to speak for and bind the organization during the course of litigation, while still providing ample opportunity for an adequate Rule 11 investigation.

In addition, we conclude that the United States Supreme Court's reasoning in *Upjohn*, while explicitly addressing only the attorney-client privilege, applies with equal force to the no-contact rule, in that the purpose of SCR 182 is to protect the attorney-client relationship, not to protect an organization from the discovery of adverse facts.⁶² The managing-speaking agent test best fulfills this purpose by not being over-inclusive. In particular, the managing-speaking agent test adopted by this court does not protect the organization at the expense of the justice system's truth-finding function by including employees whose conduct could be imputed to the organization based simply on the doctrine of respondeat superior. Finally, while any non-blanket rule has some uncertainty, we conclude that the test is sufficiently clear to provide significant guidance to counsel.⁶³

[2] In embracing the managing-speaking agent test, we do not adopt Model Rule 4.2's former comment. Also, we do not follow the 2002 comment, which essentially tracks the New York test. Rather, SCR 182 should be interpreted according to the managing-speaking agent test as set forth by the Washington Supreme Court in *Wright by Wright v. Group Health Hospital*.⁶⁴

[T]he best interpretation of "party" in litigation involving corporations is only those employees who have the legal authority to "bind" the corporation in a legal evidentiary sense, *i.e.*, those employees who have "speaking authority" for the corporation.... It is not the purpose of the rule to protect a corporate party from the revelation of prejudicial facts. Rather, the rule's function is to preclude the interviewing of those corporate employees who have the authority to *bind* the corporation.

*961 ... [E]mployees should be considered "parties" for the purposes of the disciplinary rule if, under applicable [state] law, they have managing authority sufficient to give them the right to speak for, and bind, the corporation.

In applying this test, we specifically note that an employee does not "speak for" the organization simply because his or her statement may be admissible as a party-opponent admission. Rather, the inquiry is whether the employee can bind the organization with his or her statement. Also, an employee for

whom counsel has not been retained does not become a "represented party" simply because his or her conduct may be imputed to the organization; while any confidential communications between such an employee and the organization's counsel would be protected by the attorney-client privilege, the facts within that employee's knowledge are generally not protected from revelation through *ex parte* interviews by opposing counsel.⁶⁵

A lawyer must have a reasonable opportunity to conduct an investigation under Rule 11. This investigation would be unduly hampered by an over-inclusive test, such as the party-opponent admission test adopted by the federal district court in this case. Such a test essentially bars contact with all employees, because any employee could make a statement concerning a matter within the scope of his or her employment, which would then be admissible under FRE 801(d)(2)(D) **1249 or a state equivalent. A lawyer contacting the employee could not know in advance whether the employee might make such a statement, and so would be forced to choose between foregoing information that could be useful and even necessary to a proper investigation, or risking sanctions for an SCR 182 violation. Without doubt, an organization is entitled to the protections afforded by SCR 182, but just as for individuals, this protection is not unlimited. The managing-speaking agent test most appropriately balances these competing interests, and so it is the test we adopt.

CONCLUSION

Nevada does not follow the portion of the ABA Model Rule 4.2's former comment providing that contact is barred with an organization's employee whose admission may constitute an admission on the part of the organization, nor does it follow the 2002 version of the comment. Rather, in interpreting SCR 182 as *962 applied to employees of an organization, we adopt the managing-speaking agent test. This test preserves the protection afforded by SCR 182 to an organization, while permitting sufficient flexibility to conduct an adequate pre-litigation investigation.

All Citations

118 Nev. 943, 59 P.3d 1237, 90 Fair Empl.Prac.Cas.
(BNA) 1042

Footnotes

- 1 *Palmer v. Pioneer Hotel & Casino*, 19 F.Supp.2d 1157 (D.Nev.1998).
- 2 The record does not reflect that Palmer filed a complaint with the Nevada Equal Rights Commission—only the EEOC complaint is mentioned.
- 3 It appears from the record that Kapetanakis later left Pioneer's employ, under hostile circumstances apparently arising out of a workers' compensation dispute.
- 4 42 U.S.C. §§ 2000e to 2000e-17 (1994).
- 5 Palmer's counsel also contacted one other current employee and two former employees. Jennifer Walker, the current employee, was a telephone operator, a non-supervisory position. The two former employees were Sarah Favero, an "on-call" banquet worker, and Donna Lorenz, who was Food and Beverage Director before Zamora. The federal district court found that counsel's contact with these individuals was not a violation of SCR 182, and so they are not discussed in the Ninth Circuit's order or this opinion.
- 6 See SCR 150(1); Model Rules of Prof'l Conduct R. 4.2 (1983). Model Rule 4.2 was amended in 1995 to replace the word "party" with "person," to clarify that communications occurring before litigation but after a dispute had arisen were encompassed within the rule. See Model Rules of Prof'l Conduct R. 4.2 (1995); 2 Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* § 38.2 (2001). Nevada has never adopted this amendment. Model Rule 4.2 and its comments were amended in early 2002, when the ABA House of Delegates approved proposed changes to the rules based on the Ethics 2000 Commission report. See *Ethics 2000 Commission*, at http://abanet.org/cpr/e2k-report_home.html (2002). The 2002 amendments are discussed *infra*.
- 7 Felicia Ruth Reid, Comment, *Ethical Limitations on Investigating Employment Discrimination Claims: The Prohibition on Ex Parte Contact with a Defendant's Employees*, 24 U.C. Davis L.Rev. 1243, 1249 (1991).
- 8 *Id.* at 1250; see also ABA Center for Professional Responsibility, *Annotated Model Rules of Professional Conduct* 398 (4th ed.1999); Thomas W. Biggar, *Discovery and Ethics: Dilemma in Interviewing Corporate Employees*, 1 Nev. L.Rev. 1, 5 (1998).
- 9 Reid, *supra* note 7, at 1250-51.
- 10 Biggar, *supra* note 8, at 4-5.
- 11 *Id.* at 2.
- 12 *Id.* at 1-2.
- 13 Reid, *supra* note 7, at 1252-53; Biggar, *supra* note 8, at 6; see also NRCP 11; Fed.R.Civ.P. 11. Inasmuch as the duties imposed by the Nevada and federal versions of the rule are substantially the same, any reference in this opinion to "Rule 11" means both the federal and Nevada rules.
- 14 105 Nev. 635, 781 P.2d 1150 (1989).
- 15 117 Nev. 496, 25 P.3d 191, as modified 31 P.3d 365 (2001), cert. denied, 534 U.S. 1131, 122 S.Ct. 1072, 151 L.Ed.2d 974 (2002).
- 16 In the original 1983 version, this text was designated as Comment 2. In the 1995 revisions, it was renumbered Comment 4, but the text did not change. In the 2002 revisions, it was renumbered Comment 7, and the text was changed substantially, as discussed in this opinion.
- 17 Model Rules of Prof'l Conduct R. 4.2 cmt. 4 (1995).
- 18 Model Rule 4.2 received only a minor change, to clarify that a court may permit or prohibit contact in a particular case. The change reflects actual practice under the former version of the rule. As amended in 2002, Model Rule 4.2 reads as follows (the added language is emphasized):

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Model Rules of Prof'l Conduct R. 4.2 (2002).
- 19 *Id.* R. 4.2 cmt. 7.

- 20 Charlotte Stretch, *Overview of Ethics 2000 Commission and Report*, at http://abanet.org/cpr/e2k-ov_mar02.doc (2002).
- 21 See *Model Rule 4.2—Reporter's Explanation of Changes*, at <http://www.abanet.org/cpr/rule42memo.html> (Feb. 21, 2000).
- 22 *Public Serv. Elec. & Gas v. Associated Elec. & Gas*, 745 F.Supp. 1037 (D.N.J.1990), *superseded by rule amendment as recognized in Klier v. Sordoni Skanska Const. Co.*, 337 N.J.Super. 76, 766 A.2d 761 (2001) (incorporating control group test in text of rule as amended); see also Louis A. Stahl, *Ex Parte Interviews with Enterprise Employees: A Post-Upjohn Analysis*, 44 Wash. & Lee L.Rev. 1181, 1196 (1987) (concluding that a blanket rule best serves the purpose of the no-contact rule: to provide effective representation to the client).
- 23 *Public Serv. Elec.*, 745 F.Supp. at 1043.
- 24 Biggar, *supra* note 8, at 6 (stating that SCR 182 "is an ethical rule, not a rule through which corporate parties should gain the ability to control the flow of information to their adversaries").
- 25 See *Cole v. Appalachian Power Co.*, 903 F.Supp. 975 (S.D.W.Va.1995); *Brown v. St. Joseph County*, 148 F.R.D. 246 (N.D.Ind.1993); *University Patents, Inc. v. Kligman*, 737 F.Supp. 325 (E.D.Pa.1990); see also *Weeks v. Independent School Dist. No. 1-89*, 230 F.3d 1201 (10th Cir.2000) (purporting to adopt the managing-speaking test, but applying FRE 801(d)(2)(D) to determine which employees "speak" for the university), *cert. denied*, 532 U.S. 1020, 121 S.Ct. 1959, 149 L.Ed.2d 755 (2001); *id.* at 1214-15 (Briscoe, J., concurring) (identifying the inconsistency in the majority's analysis, and explicitly basing his concurrence on FRE 801(d)(2)(D)); see also NRS 51.035(3)(d) (mirroring FRE 801(d)(2)(D)).
- 26 148 F.R.D. at 254 (quoting 2 Hazard & Hodes, *supra* note 6, § 38.6, at 38-9).
- 27 Reid, *supra* note 7, at 1274.
- 28 *Id.* at 1277.
- 29 Biggar, *supra* note 8, at 15.
- 30 *Id.* at 3-4.
- 31 Reid, *supra* note 7, at 1278; see also *Chaffee v. Kraft General Foods, Inc.*, 886 F.Supp. 1164 (D.N.J.1995) (explaining the difference between a judicial admission, which is conclusively binding, and an evidentiary party admission, which may be challenged); *In re Applin*, 108 B.R. 253 (Bankr.E.D.Cal.1989) (same).
- 32 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981).
- 33 See *Chancellor v. Boeing Co.*, 678 F.Supp. 250 (D.Kan.1988); *Wright by Wright v. Group Health Hosp.*, 103 Wash.2d 192, 691 P.2d 564 (1984).
- 34 See *Wright*, 103 Wash.2d 192, 691 P.2d 564; Model Rules of Prof'l Conduct R. 4.2 cmt. 4 (1995).
- 35 See *Chancellor v. Boeing Co.*, 678 F.Supp. 250 (D.Kan.1988) (applying test to "admission" category); *Palmer v. Pioneer Hotel & Casino*, 19 F.Supp.2d 1157 (D.Nev.1998) (applying test to more clearly define former comment's "managerial" category, but reasoning that other categories of former comment still apply).
- 36 Compare *Weeks v. Independent School Dist. No. 1-89*, 230 F.3d 1201 (10th Cir.2000) (purporting to adopt the managing-speaking test, but applying FRE 801(d)(2)(D) to determine which employees "speak" for the university), *cert. denied*, 532 U.S. 1020, 121 S.Ct. 1959, 149 L.Ed.2d 755 (2001), and *Chancellor*, 678 F.Supp. 250 (implying that evidentiary rules determine which employees have "speaking" authority), with *Wright*, 103 Wash.2d 192, 691 P.2d 564 (emphasizing that only employees who could "bind" the organization are covered), and *Porter v. Arco Metals, Div. of Atlantic Richfield*, 642 F.Supp. 1116 (D.Mont.1986) (relying on *Wright* but stating the test differently).
- 37 See *Chancellor*, 678 F.Supp. at 253; *Porter*, 642 F.Supp. at 1118; *Wright*, 691 P.2d at 569.
- 38 103 Wash.2d 192, 691 P.2d 564.
- 39 See *Weeks*, 230 F.3d 1201; *Chancellor*, 678 F.Supp. 250.
- 40 See *Chancellor*, 678 F.Supp. 250; *Palmer*, 19 F.Supp.2d 1157.
- 41 See *Wright*, 691 P.2d at 569; see also Reid, *supra* note 7, at 1289-90.
- 42 *Wright*, 691 P.2d at 569.
- 43 Reid, *supra* note 7, at 1291; Biggar, *supra* note 8, at 12.
- 44 See *Fair Automotive v. Car-X Service Systems*, 128 Ill.App.3d 763, 84 Ill.Dec. 25, 471 N.E.2d 554, 560 (1984).
- 45 Reid, *supra* note 7, at 1286.
- 46 *Id.* at 1286-87.
- 47 *Id.* at 1287.
- 48 See *Erickson v. Winthrop Laboratories*, 249 N.J.Super. 137, 592 A.2d 33 (1991), *superseded by rule amendment as recognized in Klier v. Sordoni Skanska Const. Co.*, 337 N.J.Super. 76, 766 A.2d 761 (2001) (incorporating control group

test in text of rule as amended); *Baisley v. Missisquoi Cemetery Ass'n*, 167 Vt. 473, 708 A.2d 924 (1998) (purporting not to choose between balancing test and New York test, but applying balancing test).

49 See *Baisley*, 708 A.2d at 933.

50 Compare *Morrison v. Brandeis University*, 125 F.R.D. 14 (D.Mass.1989) (permitting ex parte contact by counsel for the plaintiff professor, who was denied tenure, with professors sitting on the plaintiff's peer review panel; such contact would appear to be prohibited under every other test), with *Baisley*, 708 A.2d at 933 (prohibiting ex parte contact with a cemetery caretaker in a case seeking damages for injuries suffered by the plaintiffs' child when he fell upon a spiked fence surrounding the cemetery; such contact would appear to be permissible under most of the other tests).

51 76 N.Y.2d 363, 559 N.Y.S.2d 493, 558 N.E.2d 1030 (1990).

52 Reid, *supra* note 7, at 1293.

53 *Id.* at 1035.

54 *Id.* at 1035–36.

55 See *Strawser v. Exxon Co., U.S.A.*, 843 P.2d 613 (Wyo.1992); *State v. CIBA-GEIGY Corp.*, 247 N.J.Super. 314, 589 A.2d 180 (1991); *Dent v. Kaufman*, 185 W.Va. 171, 406 S.E.2d 68, 72 (1991); *MR & W v. President and Fellows of Harvard*, 436 Mass. 347, 764 N.E.2d 825 (2002); *Bougé v. Smith's Management Corp.*, 132 F.R.D. 560 (D.Utah 1990).

56 Although the comment has since been amended, we could still conclude that it contains the best statement of which employees should be covered; accordingly, the issue is not moot.

57 Although Pioneer argues that our *Schaefer* opinion supports application of the former comment, and Palmer concedes that *Schaefer*, together with *Cronin*, may lead us to conclude that we have adopted the former comment, including the "admission" clause, we actually rejected the portion of the comment addressed in *Schaefer*. See 117 Nev. at 507–08, 25 P.3d at 199–200.

58 *Restatement (Third) of the Law Governing Lawyers* § 100 (2000).

59 See, e.g., *Chaffee*, 886 F.Supp. 1164; *Applin*, 108 B.R. 253.

60 *Restatement*, *supra* note 58, § 100 cmt. e.

61 The NTLA's brief was filed in September 2001, before the amendments were formally adopted.

62 See *Upjohn*, 449 U.S. at 395–96, 101 S.Ct. 677.

63 See Biggar, *supra* note 8, at 22 (noting that while ethical rules provide few bright lines, attorneys, who must have a certain level of education, training, and common sense, can survive without them by being aware of when to seek further guidance and what possible consequences may attach to questionable actions).

64 103 Wash.2d 192, 691 P.2d 564, 569 (1984) (citations omitted).

65 See *Upjohn*, 449 U.S. at 395–96, 101 S.Ct. 677. We note that an attorney who abuses the interview process by inquiring into privileged matters, or even by permitting an employee to refer to confidential communications without immediately warning the employee that such communications are protected and should not be disclosed, is subject to appropriate sanctions.

Rule 4.2. Communication With Person Represented by Counsel

West's Nevada Revised Statutes Annotated | Nevada Rules of Court

Search Details


Jurisdiction: Nevada

Delivery Details

Date: December 18, 2017 at 5:21 PM

Delivered By: Bernadette Francis

Client ID: 7747-000

Status Icons: 

West's Nevada Revised Statutes Annotated
Nevada Rules of Court
Nevada Rules of Professional Conduct
[IV] Transactions with Persons Other than Clients

Rules of Prof. Conduct, Rule 4.2
Formerly cited as NV SCR 182

Rule 4.2. Communication With Person Represented by Counsel

Currentness

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Credits

Added, eff. May 1, 2006.

Editors' Notes

MODEL RULE COMPARISON--2006

Rule 4.2 (formerly Supreme Court Rule 182) is the same as ABA Model Rule 4.2. While the text of the two rules is identical, the rules are applied differently in two respects. First, Nevada has adopted the managing-speaking agent test to determine which constituents of an organization are covered by the no-contact rule. *Palmer v. Pioneer Inn Assocs., Ltd.*, 118 Nev. 943, 59 P.3d 1237 (2002). The comments to the Model Rule adopt a different test. Model Rules of Prof'l Conduct R. 4.2 cmt. 7 (2004). Second, Nevada has interpreted the Rule to prohibit a lawyer who is representing himself from contacting a represented person in the matter. *In re Discipline of Schaefer*, 117 Nev. 496, 25 P.3d 191, as modified, 31 P.3d 365 (2001). The comments to the Model Rule suggest that it may not prohibit contact when the lawyer represents himself. See Model Rules of Prof'l Conduct R. 4.2 cmt. 4 (2004) ("Parties to a matter may communicate directly with each other ..."); *Pinsky v. Statewide Grievance Committee*, 578 A.2d 1075 (Conn. 1990) (holding that Connecticut rule based on Model Rule 4.2 does not prohibit contact when lawyer represents himself). But see *Runsvold v. Idaho State Bar*, 925 P.2d 1118 (Idaho 1996) (holding that Idaho rule based on Model Rule 4.2 applies when lawyer represents himself).

Notes of Decisions (55)

Rules of Prof. Conduct, Rule 4.2, NV ST RPC Rule 4.2

Current with amendments received through November 1, 2017.

Rule 1.13. Organization as Client

West's Nevada Revised Statutes Annotated | Nevada Rules of Court

Search Details

Search Query: 1.13 (g)


Jurisdiction: Nevada

Delivery Details

Date: December 18, 2017 at 5:32 PM

Delivered By: Bernadette Francis

Client ID: 7747-000

Status Icons: 

West's Nevada Revised Statutes Annotated
Nevada Rules of Court
Nevada Rules of Professional Conduct
[I] Client-Lawyer Relationship

Rules of Prof. Conduct, Rule 1.13
Formerly cited as NV SCR 163

Rule 1.13. Organization as Client

Currentness

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information related to a lawyer's retention by an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c) or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client to the constituent and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent. In cases of multiple representation such as discussed in paragraph (g), the lawyer shall take reasonable steps to ensure that the constituent understands the fact of multiple representation.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Credits

Added, eff. May 1, 2006. As amended, eff. Jan. 1, 2007.

Editors' Notes

MODEL RULE COMPARISON--2006

Rule 1.13 (formerly Supreme Court Rule 163) is the same as ABA Model Rule 1.13 with four exceptions. First, paragraph (b) of the Rule covers the same subject matter as paragraph (b) of the Model Rule but is substantively different from the Model Rule. The Rule includes factors that the lawyer should consider in determining how to proceed under the Rule, specifies that any "measures taken shall be designed to minimize disruption of the organization and the risk of revealing" confidential information "to persons outside the organization," and identifies some specific measures that may be taken. Second, paragraph (c) of the Rule addresses the same subject matter as paragraph (c) of the Model Rule--what the lawyer should do if the lawyer's efforts under paragraph (b) are unsuccessful--but the text is different from the Model Rule. Whereas the Model Rule permits the lawyer to then reveal confidential information in certain circumstances whether or not Rule 1.6 permits the disclosure, the Nevada Rule provides that the lawyer may resign in accordance with Rule 1.16. The Nevada lawyer would only be permitted to make disclosures allowed by Rule 1.6. Third, paragraph (d) of the Model Rule has not been included. The paragraph has been reserved to maintain consistency with the Model Rules format. Fourth, paragraph (e) of the Model Rule has not been included. The paragraph has been reserved to maintain consistency with the Model Rules format.

MODEL RULE COMPARISON--2007

Rule 1.13 is amended, effective January 1, 2007, to conform to ABA Model Rule 1.13 with only one exception. Paragraph (f) includes Nevada-specific language. The Model Rule provides that when dealing with an organization's directors, officers, employees, members, shareholders or other constituents, the lawyer has to explain the identity of the client "when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing." The former Nevada Rule was consistent with the Model Rule. The amended Nevada Rule, however, departs from the Model Rule on this point by deleting the above-quoted language and requiring that the lawyer explain the identity of the client to the constituent "and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent." The final sentence of the paragraph is also Nevada-specific language.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

Nevada Rule of Professional Conduct 1.13 contains provisions analogous to former Supreme Court Rule 163.

Rules of Prof. Conduct, Rule 1.13, NV ST RPC Rule 1.13

Current with amendments received through November 1, 2017.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

OPEN MEETING LAW COMPLAINTS

Date	Tracking Number	Who Filed	Current Status
06/19/2017	13897-224	Judith Miller	CLOSED – On 11/15/2017 agenda-Finding of no violation
04/04/2017	13897-226	Frank Wright	CLOSED – On 11/15/2017 agenda-Finding of no violation
06/15/2017	13897-233	Frank Wright	CLOSED – On 11/15/2017 agenda-Finding of no violation
02/27/2017	13897-234	Frank Wright	CLOSED – On 11/15/2017 agenda-Finding of no violation
01/29/2016	13897-180	Aaron Katz	CLOSED – On 04/27/2016 agenda-Finding of no violation
08/17/2016	13897-204	Linda Newman	CLOSED – On 10/11/2016 agenda-Finding of no violation
10/21/2015	13897-171	Aaron Katz	CLOSED – On 04/27/2016 agenda-Finding of no violation
10/15/2015	13897-159	Frank Wright	CLOSED – On 01/27/2016 agenda-Finding of no violation
09/11/2015	13897-164	Frank Wright	CLOSED – On 2/24/2016 agenda (AG warned the board to ensure that its agenda topics are clearly and completely stated-IVGID took corrective action by including the OAG Opinion in the next meeting agenda and included the Opinion in the supporting material of the next meeting)
07/01/2015	13897-155	Frank Wright	CLOSED – On 01/27/2016 agenda- Finding of no violation
08/05/2011	11-024	Frank Wright	CLOSED – Finding of no violation- Finding of no violation
08/05/2011	11-025	Paul Olsen	CLOSED – Finding of no violation- Finding of no violation
08/05/2011	11-026	Aaron Katz	CLOSED – Finding of no violation- Finding of no violation
08/05/2011	11-030	Aaron Katz	CLOSED – Finding of no violation- Finding of no violation
12/22/2011	11-037	Frank Wright	CLOSED – Finding of no violation- Finding of no violation
09/28/2012	12-030	Frank Wright	CLOSED – AG provided some guidance; no corrective action required- Finding of no violation
03/18/2013	13-005	Judith Miller	CLOSED- Finding of no violation
04/02/2013	13-008	Aaron Katz	CLOSED- Finding of no violation
04/03/2013	13-010	Frank Wright	CLOSED- Finding of no violation
06/06/2013	13-017	Aaron Katz	CLOSED – IVGID took corrective action- Finding of no violation
08/29/2013	13-031	Aaron Katz	CLOSED – IVGID took corrective action- Finding of no violation
09/24/2013	13-032	Aaron Katz	CLOSED - IVGID took corrective action – Finding of no violation

ETHIC COMMISSION COMPLAINTS

Date	Tracking Number	Who Filed	Current Status
2006	06-82	Steven Kroll	CLOSED – determined no hearing by Commission needed
2006	06-83	Steven Kroll	CLOSED – determined no hearing by Commission needed
2011	11-27A, -28A, -29A, -30A, -36A		CLOSED
2011	11-24C, -22C, -19C, -21C	Larry Pesetski, Paul Olson, Chris Crow, Howard Amundsen (via Katz)	CLOSED
2012	11-19C, -21C, -22C, -23C	Aaron Katz	CLOSED
2012	13-39C	Frank Wright	CLOSED - Not referred to Commission, dismissed RFO in its entirety
2013	13-07C, 08C, -11C	Aaron Katz	CLOSED - Not referred to Commission, dismissed RFO in its entirety

2013	12-72C, -73C, -74C	Frank Wright	CLOSED
------	--------------------	--------------	--------

11/28/2017

RESPONSE

December 22, 2017

*Via Electronic Mail- CBateman@ag.nv.gov
& Hand Delivery to:*

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
Boards and Open Government Division
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

Re: RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES- OPEN MEETING LAW COMPLAINT, WRIGHT, FRANK O.A.G. FILE NO. 13897-257

Dear Ms. Bateman:

We received your November 30, 2017, correspondence notifying the Incline Village General Improvement District (herein referenced as "IVGID" or "District") of the above referenced complaint by Frank Wright alleging that IVGID has violated the Nevada Open Meeting Law ("OML"). Please accept this correspondence and the referenced enclosures as IVGID's response.

Issue Presented

1. Whether IVGID General Counsel's attempt to conduct a litigation non-meeting after the conclusion of the November 15, 2017, meeting of the IVGID Board of Trustees was a violation of the Nevada OML.

IVGID's Position

Before addressing the substance of Mr. Wright's complaint, Mr. Wright was not present at the conclusion of the November 15, 2017 Board of Trustees meeting, so his assertions that there was a "closed" or "secret meeting" are not credible or reliable and are otherwise false assertions.¹ Indeed, whether Mr. Wright has standing to bring this OML complaint without firsthand knowledge of the alleged facts that he asserts support his charge that there was a violation of the OML, is an open question that has not been addressed in the OML, by the OAG in any published opinion, or within the OAG's Open Meeting Law Manual.

¹ Mr. Wright's complaint is a hearsay narrative of "one resident who attended the regular board meeting but was still present and unnoticed and sitting in the room." Mr. Wright alleges based off the information provided by his "witness" that "Chairman [sic] continued with the unannounced and not publicly posted meeting." Mr. Wright restates the events in a way that is both false and misleading, by stating his "witness" saw two Trustees reject the special meeting as a violation of the OML and proceeded to walk out (Matt Dent and Tim Callicrate). It was also at this time that Mr. Wright's "witness" was approached by Finance Director Gerry Eick, whom escorted her to the door, and closed the door after she left the room. Mr. Wright appears to argue that the litigation non-meeting should have been noticed as a meeting under the OML.

That said, Mr. Wright's complaint is meritless. IVGID did not conduct a "closed, secret meeting" of the Board of Trustees.

NRS 241.015(3)(b)(2) is clear when it excludes from the definition of "Meeting," for purposes of the OML, a meeting of a quorum of a public body:

"[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both."

Section 3.05 of the OAG's Open Meeting Law Manual further explains:

A meeting held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to NRS 241.015(3)(b)(2) is not a meeting for purposes of the Open Meeting Law and does not have to be open to the public. In fact, no agenda is required to be posted and no notice is required to be provided to any member of the public. See OMLO 2002-21 (May 20, 2002) ...

It is important to note that a public body may deliberate "collectively to examine, weigh and reflect upon the reasons for or against the action," which connotes collective discussion in an attorney-client conference. See NRS 241.015(2); Dewey v. Redevelopment Agency, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003), OMLO 2001-09 (March 28, 2001) and OMLO 2002-13 (March 22, 2003). However, NRS 241.015(3)(b)(2) does not permit a public body to take action in an attorney-client conference.

On November 15, 2017, at approximately 9:55p.m. Chairwoman Wong called for a five-minute break and stated the board would resume session at 10:00p.m. The livestream video of November 15, 2017 can be viewed at the following link: <https://livestream.com/accounts/3411104> identified as **Exhibit "A"**. Before the Board resumed its meeting, the power went out. At that time, Chairwoman Wong removed items G through K from the Agenda and moved them to the Agenda for the next meeting. The Agenda from the November 15, 2017 has been included for your review as **Exhibit "B"**. Chairwoman Wong allowed for the final public comment period, even though the power had gone out, and once everyone had an opportunity to speak, Chairwoman Wong adjourned the regular meeting.

Immediately thereafter, Chairwoman Wong asked the Trustees to stay to participate in a litigation non-meeting. As she attempted to commence the meeting, a member of the public would not leave the room after multiple requests, so Chairwoman Wong asked Gerry Eick, IVGID Director of Finance, to escort the person out of the room. Once the litigation non-meeting commenced, District Legal Counsel asked Trustee Matthew Dent to excuse himself because of a conflict-of-interest regarding the subject of the litigation non-meeting. Trustee Callicrate objected to Trustee Dent being asked to leave and became belligerent. In response, Trustee Horan expressed his frustration with Trustee Callicrate, which then escalated into uncivil discourse between the Trustees.

Consequently, District Legal Counsel concluded the litigation non-meeting and offered to meet with each Trustee individually. The litigation non-meeting did not last more than ten minutes. Subsequently, District Legal Counsel did follow up with each Trustee and was able to meet with four of the five Trustees individually by phone or in person.

Along with the foregoing response, please review the following affidavits of individuals who were present at the conclusion of the IVGID Board meeting November 15, 2017, and during the litigation non-meeting:²

- **Exhibit “C”**- Affidavit of Chairwoman Kendra Wong
- **Exhibit “D”**- Affidavit of Trustee Phillip Horan
- **Exhibit “E”**- Statement of Trustee Peter Morris³
- **Exhibit “F”**- Affidavit of Steven J. Pinkerton, IVGID General Manager
- **Exhibit “G”**- Affidavit of Misty Moga, IVGID Communication Coordinator
- **Exhibit “H”**- Affidavit of Jason D. Guinasso, Esq., IVGID Legal Counsel

In addition to the foregoing affidavits, District Counsel is willing and able to schedule a day and time for the OAG to conduct phone interviews of each Trustee and/or any witness, District Legal Counsel is currently working to schedule dates and times for interviews with the IVGID Trustees as requested by the OAG. IVGID is confident that your interview of the Trustees and the witnesses will confirm that the subject matter of the complaint filed by Mr. Wright was in fact an attempt to conduct a litigation non-meeting on November 15, 2017, where, “potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power . . .” and not a “closed, secret meeting,” as he falsely alleges.

Mr. Wright Brought This Open Meeting Law Complaint in Bad Faith.

Mr. Wright has a long history of bringing complaints against IVGID that have no merit. To illustrate this point, I have enclosed for your review as **Exhibit “I”** a log of the OML complaints filed against the District since 2011. Please note that I did not start representing the District until January of 2015. Nevertheless, whether it was my predecessor, my law partner or me, Mr. Wright has been relentless in his attacks against the District, having filed nearly half of the complaints against the District during that time period.

Additionally, please view the video contained in the following drop box link identified as **Exhibit “J”**:

[https://www.dropbox.com/s/b6rshzk663mtjvf/Wright Frank Highlights.mp4?dl=0](https://www.dropbox.com/s/b6rshzk663mtjvf/Wright%20Frank%20Highlights.mp4?dl=0)

This video shows excerpts of what Mr. Wright has said and how he has acted at meetings over the last eighteen months. You will see a person who engages in slander, personal attacks and every form of insult and vitriol. Please particularly pay attention to the last several minutes where he cites out of context conversations he has allegedly had with the OAG and/or the written decision the OAG wrote finding no violation of the OML, but admonishing legal counsel regarding compliance with the spirit of the OML. Clearly, Mr. Wright is using every tool at his disposal, including but not limited to filing OML complaints, abusive and disruptive conduct during

² Trustee Dent and Trustee Callicrate were invited in writing by District Legal Counsel to provide written statements to include with this response; however, the Trustees did not respond to Counsel’s invitation.

³ Trustee Morris provided a written statement prior to leaving the country for vacation. District Legal Counsel was unable to convert this statement into an Affidavit for his signature before he was scheduled to leave.

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
December 22, 2017

public comment, frivolous litigation in District Court, complaints to the County Commission, complaints to the State Board of Taxation, complaints to Legislature and the Governor, etc., as a means to advance his political objectives, smear the professional reputations of staff and independent contractors who serve the District, and to otherwise harass the District.

Mr. Wright's current complaint is yet another example of him asserting some alleged misconduct has occurred that has absolutely no basis whatsoever in law or in fact.

Scope of Response

IVGID has not responded to each and every assertion submitted in Mr. Wright'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

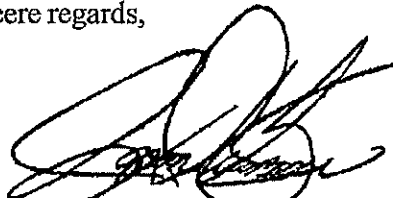
In the event that this memorandum has failed to address an alleged violation of the Nevada Open Meeting Law due to the vagueness and ambiguity of Mr. Wright's Complaint, IVGID denies that any such violation has occurred. IVGID has a stellar record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

Concluding Remarks

In accordance with the foregoing, IVGID respectfully requests that the Attorney General conclude that there has been no violation of the Nevada Open Meeting Law.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Frank Wright, A.G. File No. 13897-257.

Sincere regards,



HUTCHISON & STEFFEN, LLC
Jason D. Guinasso, Esq.

Encl.

cc: Chairwoman Kendra Wong
General Manager Steve Pinkerton
District Clerk Susan Herron

JDG:bf

EXHIBIT A

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

The livestream video of November 15, 2017 can be viewed at the following link:

<https://livestream.com/accounts/3411104>

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B



NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at **6 p.m.** on **Wednesday, November 15, 2017** 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.

Incline Village General Improvement District

Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

www.yourtahoeplace.com



NOTICE OF MEETING

Agenda for the Board Meeting of November 15, 2017 - Page 2

E. DISTRICT STAFF UPDATES*

1. Solid Waste Services Update (Presenting Staff Member: Director of Public Works Joe Pomroy)

F. GENERAL BUSINESS (*for possible action*)

1. 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. 13897-224, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (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. 13897-226, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)
3. 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. 13897-233, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)
4. 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. 13897-234, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)
5. Receive, review and discuss supplement from Megan Fogarty of Holland and Hart LLC regarding modification to the lease between Parasol Tahoe Community Foundation and IVGID, responses to Board of Trustees questions related thereto, as well as related covenants, conditions, restrictions and encumbrances of record relating to the leased property and the proposed lease modification (Requesting Trustee: Chairwoman Kendra Wong)
6. Review, discuss and possibly vote on each of the following questions regarding the Parasol Tahoe Community Foundation request for modification to their 30-year ground lease: (Requesting Trustee: Chairwoman Kendra Wong)
 - A. Is there a justifiable need for additional recreation space? Is there a justifiable need for different administration space?
 - B. Are there other spaces in IV/CB, either for rent or purchase, that meet the needs of IVGID?



NOTICE OF MEETING

Agenda for the Board Meeting of November 15, 2017 - Page 3

- C. Would it be advantageous for IVGID to design and build space that meets our specific needs?
 - D. Is the Parasol proposal an economically viable option?
 - E. Are the terms and conditions of the Parasol proposal the most advantageous for IVGID?
- 7. Receive, discuss, and possibly provide direction on the history of Resolution 1760 (Policy and Procedure Number 135), Temporary Dog Park at Village Green, and how this amenity fits into the Community Services Master Plan (Requesting Staff Member: Parks and Recreation Director Indra Winquest)
 - 8. Review, discuss, and possibly take action to authorize to continue contract for legal services for the Incline Village General Improvement District with the law firm of Reese, Kintz, Guinasso, LLC and their successor in interest law firms of Reese, Kintz, LLC and Hutchison & Steffen, PLLC, for remainder of the current contract term set to expire at the end of 2018 (Requesting Staff Member: General Manager Steve Pinkerton)
 - 9. Review, discuss, and possibly adopt a revised Audit Committee Policy 15.1.0 (Requesting Trustee: Vice Chairman Phil Horan)
- G. DISTRICT STAFF UPDATE
- 1. General Manager Steve Pinkerton
 - ❖ Financial Transparency
 - ❖ Capital Projects Update
 - ❖ Board Retreat
 - ❖ Quarterly Dashboards
- H. APPROVAL OF MINUTES (*for possible action*)
- 1. Regular Meeting of August 22, 2017 – *resubmittal, minutes only*
- I. REPORTS TO THE IVGID BOARD OF TRUSTEES*
- 1. District General Counsel Jason Guinasso
- 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*
- K. CORRESPONDENCE RECEIVED BY THE DISTRICT*
- 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

Agenda for the Board Meeting of November 15, 2017 - Page 4

- 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 Thursday, November 9, 2017 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of November 15, 2017) 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

1 AFFIDAVIT OF KENDRA WONG

2 STATE OF NEVADA)
3) ss.
4 COUNTY OF WASHOE)

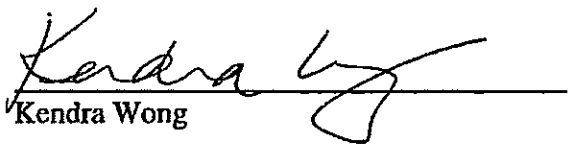
5 Under penalty of perjury, I, Kendra Wong, hereby swear that the information contained in
6 this Affidavit is true and accurate:

- 7 1. My name is Kendra Wong.
- 8 2. I am a resident of the State of Nevada.
- 9 3. I am over 18 years of age.
- 10 4. I serve as the Chairwoman of the Board of Trustees for Incline Village General
11 Improvement District ("IVGID").
- 12 5. The IVGID Board of Trustees attempted to have a litigation non-meeting on November
13 15, 2017 after the regular board meeting.
- 14 6. The power had gone out in the building during the end of the regular board meeting.
- 15 7. After I adjourned the regular meeting, I asked the trustees to stay for a litigation non-
16 meeting.
- 17 8. Trustee Tim Callicrate said that he didn't know that there was a litigation non-meeting
18 that evening.
- 19 9. As I tried to commence the meeting, a member of the public would not leave the room
20 after multiple requests, so I asked Mr. Gerry Eick, Director of Finance, to escort her out
21 of the room.
- 22 10. Once the litigation non-meeting commenced, Mr. Jason Guinasso, District Legal
23 Counsel, asked Trustee Matthew Dent to leave because of a conflict-of-interest
24 regarding the subject of the litigation non-meeting.
- 25 11. Trustee Callicrate objected to Trustee Dent leaving.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 12. I explained that Trustee Dent not being present in the litigation non-meeting was consistent with the original litigation non-meeting we had when staff and counsel communicated the initiation of the lawsuit with Governance Sciences Group, Inc.
- 13. Trustee Callicrate claimed that he was not at the initial meeting, which I do not recall.
- 14. Trustee Callicrate made inappropriate accusations that Trustee Phil Horan responded to.
- 15. After that, Mr. Guinasso decided to communicate with each of the trustees individually and we concluded the litigation non-meeting.

DATED: This 17th day of December 2017.


Kendra Wong

SUBSCRIBED and SWORN to before me
This 17th day of December 2017.


NOTARY PUBLIC

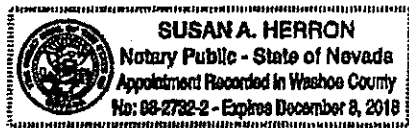


EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D

1 **AFFIDAVIT OF PHILIP HORAN**

2 **STATE OF NEVADA**)
) ss.
3 **COUNTY OF WASHOE**)

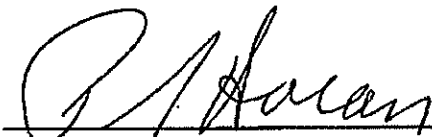
4 Under penalty of perjury, I, Philip Horan, hereby swear that the information contained in this
5 Affidavit is true and accurate:

- 6 1. My name is Philip Horan.
- 7 2. I am a resident of the State of Nevada.
- 8 3. I am over 18 years of age.
- 9 4. I serve as the Vice Chairman of the Board of Trustees for Incline Village General
10 Improvement District ("IVGID").
- 11 5. At approximately 9:55 p.m. on November 15, 2017, the power at the Chateau went out.
- 12 6. The Board meeting had not been completed.
- 13 7. After discussion, it was determined that we should not adjourn until the public had the
14 opportunity to have the final public comment.
- 15 8. Since the power was off the public comment could not be filmed so it was decided that
16 it should be recorded.
- 17 9. There was one person for public comment and that was Margaret Martini.
- 18 10. After she completed her comment the regular meeting of the Board of Trustees was
19 adjourned.
- 20 11. It was then announced that the Board of Trustees would have a litigation non-meeting
21 to discuss a litigation matter.
- 22 12. Prior to opening the litigation non-meeting there was discussion.
- 23 13. Tim Callicrate objected because he had not been made aware of the meeting in
24 advance.
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 14. There was some back and forth between Tim and Steve.
- 15. Jason Guinasso then said that Matthew Dent was not to be part of the litigation non-meeting because it was about Flash Vote and he had a business relationship with the company.
- 16. Matthew Dent said that he would not be part of the discussion or vote but he should be able to attend.
- 17. Tim Callicrate supported Matthew Dent's idea.
- 18. I do not recall if there was any comment by Tim Callicrate or Matthew Dent that the litigation non-meeting was an OML violation.
- 19. Jason Guinasso said there was confidential information involved, and he would not discuss the matter if Matthew Dent was present.
- 20. Jason Guinasso said that if Matthew Dent would not leave, he would speak to the other Trustee's one on one.
- 21. Tim Callicrate and Matthew Dent left.
- 22. The litigation non-meeting was never opened and there was no discussion about the litigation.

DATED: This 17th day of December 2017.


 Philip Horan

SUBSCRIBED and SWORN to before me
This 17th day of December 2017.


 NOTARY PUBLIC



EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT E

I am a duly elected Trustee serving on the board of the Incline Village General Improvement District (IVGID). During the evening of November 15th I attended an appropriately noticed IVGID Board Meeting. During the meeting a power cut necessitated the early adjournment of that meeting.

Following that board meeting a Litigation Non Meeting was to be convened. It was my belief the room had been cleared of the public prior to the start of this Litigation Non Meeting. At the start of the Litigation Non Meeting IVGID's General Counsel, Jason Guinasso, requested Trustee Matthew Dent to leave because the subject of the meeting was in regard to active litigation involving a company with whom Trustee Dent had a current and active individual contract for services.

Trustee Dent objected to being asked to leave. A brief debate between Trustee Dent and – primarily – Counsel Jason Guinasso ensued where Trustee Dent refused to be excluded from the Litigation Non Meeting and Counsel Jason Guinasso attempted to explain why Trustee Dent needed to be excluded. Trustee Tim Callicrate then also voiced objection to Trustee Dent being excluded. While I do not recall specific comments by any individual participant, the debate certainly became very heated and uncivil. Trustee Callicrate and Trustee Dent did though, exclaim that this Litigation Non Meeting was a violation of the Open Meeting Law and after more argument both walked out of the room.

I do not recall if it was immediately before or immediately after Trustees Dent and Callicrate walked out, but at about that time Counsel Jason Guinasso recommended not moving forward that evening with the Litigation Non Meeting and instead said he would contact each of the four Trustees separately to update us on what he was going to cover in the Litigation Non Meeting. The remaining three Trustees (Kendra Wong, Phil Horan and myself) were happy with this suggestion and the meeting concluded and we all left.

The above statement is my best recollection of events regarding OML Complaint 13897-257. I would be happy to swear to that as needed and/or required.

Peter W Morris
Trustee
Incline Village General Improvement District

EXHIBIT F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

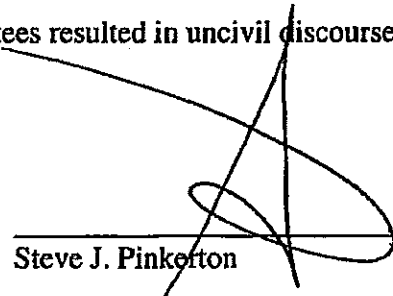
AFFIDAVIT OF STEVEN J. PINKERTON

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Under penalty of perjury, I, Steven J. Pinkerton, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Steven J. Pinkerton.
2. I am a resident of the State of Nevada.
3. I am over 18 years of age.
4. I serve as the General Manager for Incline Village General Improvement District ("IVGID").
5. On November 15, 2017, we were not able to conduct the non-meeting we had planned for the following reasons:
6. A dispute about whether one Trustee could participate in the non-meeting could not be resolved; and
7. Tensions between a few of the Trustees resulted in uncivil discourse.

DATED: This 19th day of December, 2017.



Steve J. Pinkerton

SUBSCRIBED and SWORN to before me
This 19th day of December, 2017.



NOTARY PUBLIC



EXHIBIT G

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT G

1 **AFFIDAVIT OF MISTY MOGA**

2 **STATE OF NEVADA**)
) ss.
3 **COUNTY OF WASHOE**)

4 Under penalty of perjury, I, Misty Moga, hereby swear that the information contained in this
5 Affidavit is true and accurate:

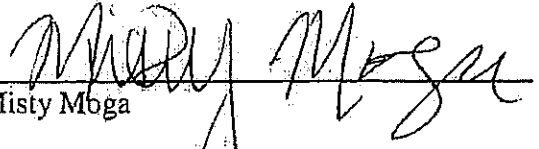
- 6 1. My name is Misty Moga.
- 7 2. I am a resident of the State of Nevada.
- 8 3. I am over 18 years of age.
- 9 4. I serve as the Communication Coordinator for Incline Village General Improvement
10 District ("IVGID").
- 11 5. After the Board of Trustees meeting concluded on November 15, 2017, General
12 Counsel Guinasso reminded the Trustees to stay for a legal non-meeting to discuss the
13 Governance Sciences litigation.
- 14 6. Mr. Guinasso asked Trustee Dent to excuse himself from the meeting due to conflict of
15 interest; Trustee Callicrate argued that Trustee Dent can stay.
- 16 7. A member of the public was standing in the dark watching the conversation and asked,
17 'what is this meeting?'
- 18 8. Staff and the member of the public were asked to leave the room.
- 19 9. As Mr. Eick and I were in the hallway, I could hear Trustee Callicrate shouting in the
20 room.
- 21 10. Trustee Callicrate stormed out of the room into the hallway to leave the building and he
22 shouted, 'Fucking clowns. I'm leaving and you will continue to host your meeting and
23 make a decision without me which is illegal.'
- 24
- 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11. As Trustee Callicrate and Trustee Dent left the ballroom, Mr. Pinkerton opened the double doors to the ballroom to indicate no meeting was being conducted.

12. The legal non-meeting was over; it lasted approximately 5 minutes.

DATED: This 19th day of December 2017.


Misty Moga

SUBSCRIBED and SWORN to before me
This 19th day of December 2017.


NOTARY PUBLIC

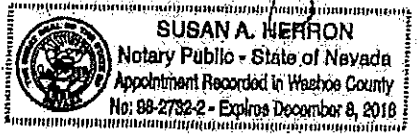


EXHIBIT H

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT H

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFFIDAVIT OF JASON D. GUINASSO, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Under penalty of perjury, I, Jason D. Guinasso, Esq., hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Jason David Guinasso.
2. I am a resident of the State of Nevada.
3. I am over 18 years of age.
4. I am a licensed attorney in both Nevada and California.
5. I am retained as General Counsel for Incline Village General Improvement District ("IVGID").
6. The closed session, referred to as such in an Open Meeting Law complaint filed by Mr. Frank Wright against IVGID, AG File No. 13897-257, was in fact a litigation non-meeting wherein the IVGID Trustees gathered and intended to receive information from me regarding potential and existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power.
7. On November 15, 2017, at approximately 9:55p.m. Chairwoman Wong called for a five-minute break and stated the board would resume session at 10:00p.m. (See livestream video of November 15, 2017 <https://livestream.com/accounts/3411104> identified as Exhibit "A"). Before the Board resumed its meeting, the power went out. At that time Chairwoman Wong removed items G through K from the Agenda and moved them to the Agenda for the next meeting. Chairwoman allowed for the final

1 public comment period, even though the power had gone out, and once everyone had an
2 opportunity to speak, she adjourned the meeting.

3 8. Immediately thereafter, Chairwoman Wong adjourned the regular meeting and then she
4 asked the Trustees to stay to participate in a litigation non-meeting. As she attempted
5 to commence the meeting, a member of the public would not leave the room after
6 multiple requests, so Chairwoman Wong asked Gerry Eick, IVGID Director of Finance,
7 to escort the person out of the room.

8 9. Once the litigation non-meeting commenced, I asked Trustee Matthew Dent to excuse
9 himself from the meeting because of a conflict-of-interest regarding the subject of the
10 litigation non-meeting.

11 10. Trustee Callicrate objected to Trustee Dent being asked to leave and became
12 belligerent.

13 11. In response, Trustee Horan expressed his frustration with Trustee Callicrate, which then
14 escalated into uncivil discourse between the Trustees.

15 12. Consequently, I concluded the litigation non-meeting and offered to meet with each
16 Trustee individually.

17 13. The litigation non-meeting did not last more than ten minutes.

18 14. After the meeting, I did follow up with each Trustee and was able to meet with four of
19 the five Trustees individually by phone or in person.

20 15. I am not at liberty to discuss the subject matter that was to be discussed during the
21 litigation non-meeting. Everything discussed during the litigation non-meeting is
22 confidential and protected by the attorney-client privilege.

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

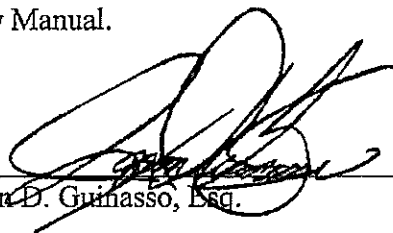
16. That said, the litigation non-meeting never commenced. However, if the non-meeting would have proceeded, the meeting was to be held in accordance with NRS 241.015 (3)(b) and Section 3.05 of the Open Meeting Law Manual.

DATED: This 22nd day of December 20, 2017.

SUBSCRIBED and SWORN to before me
This 22 day of December, 2017.



NOTARY PUBLIC



Jason D. Guinasso, Esq.

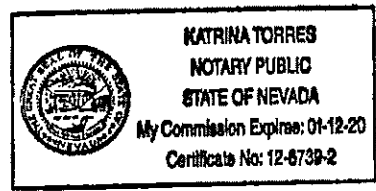


EXHIBIT I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT I

OPEN MEETING LAW COMPLAINTS

Date	Complaint Number	Who Filed	Outcome/Resolution
06/19/2017	13897-224	Judith Miller	CLOSED – On 11/15/2017 agenda-Finding of no violation
04/04/2017	13897-226	Frank Wright	CLOSED – On 11/15/2017 agenda-Finding of no violation
06/15/2017	13897-233	Frank Wright	CLOSED – On 11/15/2017 agenda-Finding of no violation
02/27/2017	13897-234	Frank Wright	CLOSED – On 11/15/2017 agenda-Finding of no violation
01/29/2016	13897-180	Aaron Katz	CLOSED – On 04/27/2016 agenda-Finding of no violation
08/17/2016	13897-204	Linda Newman	CLOSED – On 10/11/2016 agenda-Finding of no violation
10/21/2015	13897-171	Aaron Katz	CLOSED – On 04/27/2016 agenda-Finding of no violation
10/15/2015	13897-159	Frank Wright	CLOSED – On 01/27/2016 agenda-Finding of no violation
09/11/2015	13897-164	Frank Wright	CLOSED – On 2/24/2016 agenda (AG warned the Board to ensure that its agenda topics are clearly and completely stated-IVGID took corrective action by including the OAG Opinion in the next meeting agenda and included the Opinion in the supporting material of the next meeting)
07/01/2015	13897-155	Frank Wright	CLOSED – On 01/27/2016 agenda- Finding of no violation
08/05/2011	11-024	Frank Wright	CLOSED – Finding of no violation- Finding of no violation
08/05/2011	11-025	Paul Olsen	CLOSED – Finding of no violation- Finding of no violation
08/05/2011	11-026	Aaron Katz	CLOSED – Finding of no violation- Finding of no violation
08/05/2011	11-030	Aaron Katz	CLOSED – Finding of no violation- Finding of no violation
12/22/2011	11-037	Frank Wright	CLOSED – Finding of no violation- Finding of no violation
09/28/2012	12-030	Frank Wright	CLOSED – AG provided some guidance; no corrective action required- Finding of no violation
03/18/2013	13-005	Judith Miller	CLOSED- Finding of no violation
04/02/2013	13-008	Aaron Katz	CLOSED- Finding of no violation
04/03/2013	13-010	Frank Wright	CLOSED- Finding of no violation
06/06/2013	13-017	Aaron Katz	CLOSED – IVGID took corrective action- Finding of no violation
08/29/2013	13-031	Aaron Katz	CLOSED – IVGID took corrective action- Finding of no violation
09/24/2013	13-032	Aaron Katz	CLOSED - IVGID took corrective action – Finding of no violation

ETHIC COMMISSION COMPLAINTS

Date	Complaint Number	Who Filed	Outcome/Resolution
2006	06-82	Steven Kroll	CLOSED – determined no hearing by Commission needed
2006	06-83	Steven Kroll	CLOSED – determined no hearing by Commission needed
2011	11-27A, -28A, -29A, -30A, -36A		CLOSED
2011	11-24C, -22C, -19C, -21C	Larry Pesetski, Paul Olson, Chris Crow, Howard Amundsen (via Katz)	CLOSED
2012	11-19C, -21C, -22C, -23C	Aaron Katz	CLOSED
2012	13-39C	Frank Wright	CLOSED - Not referred to Commission, dismissed RFO in its entirety
2013	13-07C, 08C, -11C	Aaron Katz	CLOSED - Not referred to Commission, dismissed RFO in its entirety

2013	12-72C, -73C, -74C	Frank Wright	CLOSED
------	--------------------	--------------	--------

11/28/2017

EXHIBIT J

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT J

Video containing excerpts of what Mr. Wright has said and how he has acted at meetings over the last eighteen months, contained in the following drop box link:

https://www.dropbox.com/s/b6rshzk663mtjvf/Wright_Frank_Highlights.mp4?dl=0

COMPLAINT

ADAM PAUL LAXALT
Attorney General



NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

November 30, 2017

via Certified Mail 7009 2250 0001 8859 8693

Incline Village General Improvement District -- Board of Trustees
Kendra Wong, Chair
895 Southwood Boulevard
Incline Village, NV 89451

Dear Chair Wong:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML). NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the Incline Village General Improvement District Board of Trustees (Board).

The OAG requests that the Board prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the Board's response including, but not limited to, audio and/or video recordings of the Board's November 15, 2017 meeting in question. Please also provide a copy of the agenda and support materials from the September 20, 2017 meeting.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before December 15, 2017.

Should you have any questions, please contact Althea Zayas at (702) 486-3224 or via email at azayas@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
Chief Deputy Attorney General
Boards and Open Government Division

CB:arz
Enclosure



**STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL**

100 N. Carson St.
Carson City, NV 89701
Phone: 775-684-1100
Fax: 775-684-1108

www.ag.nv.gov

For official use only

Received by: _____

Date Received: _____

Complaint Type: _____

Referred to: BCP GI
 IFU OML MPFU
 MFCU PIU WCFU
(Stamp here)

OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law – NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

Salutation: Mr. Mrs. Ms. Miss

Your Name: Wright Frank

Your Address: P.O. Box 186 Crystal Bay NV 89402

Address City State Zip

Your Phone Number: 775-253-4919 818-601-1996

Home Cell Work Fax

Email: alpineport55@gmail.com

Call me between 8am-5pm at: Home Cell Work

Age: Under 18 18-29 30-39 40-49 50-59 60 or older

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST:

Name of Public Body: Incline Village General Improvement Dist
(i.e., specific board, commission, agency, or person(s) etc.)

Date of meeting where alleged violation occurred (mm/dd/yyyy): _____

Over
✓
P. 2 on Back

SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:

Incline Village General Improvement District held
An unannounced, closed, secret meeting of 5 board members
outside the view of the public.

See attached page

SECTION 3.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is not my private attorney, but rather represents the public. I am filing this complaint to notify the Attorney General's Office of alleged violations of the Open Meeting law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the public body identified in this complaint.

Signature



Print Name

Frank Wright

11-27-17
Date (mm/dd/yyyy)

SECTION 4. (Optional)

The following section is optional and is intended to help our office better serve Nevada consumers. Please check the categories that apply to you.

Gender: Male Female

Have you previously filed a complaint with our office?: Yes No

If yes, enter in the approximate filing date (mm/dd/yyyy) of your original complaint: _____

I am (mark all that apply):

- Income below federal poverty guideline
- Disaster victim
- Person with disability
- Medicaid recipient
- Military service member
- Veteran
- Immediate family of service member/veteran

Ethnic Identification:

- White/Caucasian
- Black/African American
- Hispanic/Latino
- Native American/Alaskan Native
- Asian/Pacific Islander
- Other: Senior Citizen

Primary Language:

- English
- Spanish
- Other: _____

May we provide your name and telephone number to the media in the event of an inquiry about this matter?

Yes No

How did you hear about our complaint form (please choose only one):

- Called/visited Las Vegas AG Office Called/visited Carson City Office Called/visited Reno Office
- Attended AG Presentation/Event Another Nevada State Agency/Elected Official Search Engine AG Website
- AG Social Media Sites Media: Newspaper/Radio/TV Other

Return original form to:

Office of the Attorney General – ATTN: OML Coordinator
100 N. Carson St.
Carson City, NV 89701
Fax: 775-684-1108

(Faxed copies will be accepted followed by original)

Office of the Attorney General
State of Nevada
OML Division

November 27, 2017

Dear MS Bateman,

I am again filing an open meeting law violation against Incline Village General Improvement district for holding a secret meeting after the November 15, 2017 regular board meeting.

Five Trustees were present, along with the General Manager, and legal counsel.

The regular meeting was adjourned, then the Trustees were told they had a closed session. But an interesting event took place, there was a power outage. The room went totally dark. But the Chairman continued with the unannounced and not publicly posted meeting. Because of the dark room, one resident who attended the regular board meeting was still present but unnoticed and sitting in the room. She was able to witness two Trustees reject the special meeting as a violation of the OML and proceeded to walk out of the room. (Matt Dent and Tim Calicrate) The resident sitting in the room was approached and ask to leave the room by the Finance Director Gerry Eick, and he escorted her to the door, and closed the door after she left the room.

This meeting had something to do with voting on litigation against a firm conducting surveys, and opinion polls. This vote should have been open to the public and discussed in an open meeting. Regardless of the content, the meeting under Nevada Law should have been posted. It is ironic that during the regular board meeting the board agenized and discussed the previous OML violations committed by the board. But not surprisingly the Legal Counsel Jason Guinasso and board Chair Kendra Wong both stated that the Attorney Generals opinions were contrite and just her opinions. Chairman Wong Stated: "it all depends on who is in the AG's office making the decisions, as to the validity of the opinions". These Statements can be viewed on the livestream. My initial opinion is that the legal Counsel and Board chair didn't view the OML opinions as a valid assessment of the behavior of the IVGID board. It sounded to me as if Chairman Wong, and Jason Guinasso , could give a "whoopy" as to what the AG has to say, or that the AG's opinions are baseless.

Resident who was present and in room during meeting:

Margaret Martini 775-722-4152

Margaretmartini@liveintahoe.com

Thank You,

Frank Wright

775-253-4919

alpinesportss@gmail.com

MEMORANDUM

TO: Board of Trustees

FROM: Kendra Wong
Chairwoman, IVGID Board of Trustees

SUBJECT: Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities

DATE: November 30, 2018 (*carried over from December 12, 2018 meeting and the January 23, 2019 meeting*)

At the March 8, 2017 Board of Trustees meeting, the Board of Trustees undertook a conversation about what their work plan should be for 2017/2018. The following list represents the consensus of this conversation:

Ordinance 7

- Review feedback from the community sessions
- Staff report updating progress
- Identify areas of Ordinance 7 to address

Master Plan/Capital Plan

- Create a structure for Master Planning
 - o How do all of our Master Plans fit together
 - o Create a timeline for regular review
 - o Leverage public/private partnerships (e.g. ITF)
- Relationships with non-IVGID entities
 - o Washoe County
 - Pedestrian paths
 - Left turn signals
 - Lighted crosswalks
 - Scenic Tahoe Blvd.
 - Regional Plan
 - o Explore options with respect to town/city/county

Communication

- IQM2
 - o Staff report on software functionality
 - o Staff report on required resources to implement

Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities -2-

November 30, 2018

Financial Reporting

- Performance metrics
 - o Financial
 - o Non-financial/qualitative
- Committee on Popular Reporting
- Continue to improve Fixed Cost/Variable Cost Analyses
- Policies & Procedures – IVGID Code

As we embark on another two-year cycle, it is a good idea to assess our progress related to these items and determine if we need to add items, remove items, or continue to work on items. Our objective is to set a date to reassess our priorities. I have provided a template that you can use to help facilitate our discussion on the date we set.

Incline General Improvement District
Board Work Plan

	Current Status	Comments	Recommendation Remove/Keep/Maintain
Ordinance 7			
Review feedback form community sessions			
Staff report updating progress			
Identify areas of Ordinance 7 to address			
Master Plan/Capital Plan			
Create a structure for Master Planning			
How do all of our Master Plans fit together			
Create a timeline for regular review			
Leverage public/private partnerships (e.g. ITF)			
Relationships with non-IVGID entities			
Washoe County			
Pedestrian paths			
Left turn signals			

	Current Status	Comments	Recommendation Remove/Keep/Maintain
Lighted crosswalks			
Scenic Tahoe Blvd.			
Regional Plan			
Explore options with respect to town/city/county			
Communication			
IQM2			
Staff report on software functionality			
Staff report on required resources to implement			
Financial Reporting			
Performance metrics			
Financial			
Non-financial/qualitative			
Committee on Popular Reporting			
Continue to improve Fixed Cost/Variable Cost Analyses			

	Current Status	Comments	Recommendation Remove/Keep/Maintain
Policies & Procedures - IVGID Code			

Add recommendations for additional priorities below:

MEMORANDUM

TO: Board of Trustees

FROM: Kendra Wong
Chairwoman, IVGID Board of Trustees

SUBJECT: Review, discuss and possibly take action on Title 1 of the IVGID Code

DATE: January 10, 2019

At the December 12, 2018 Board of Trustees meeting, the Board had a discussion about the IVGID Code and the Board collectively decided to review Title 1 and discuss it at its first meeting in January. There was not a full Board present at the January 23, 2019 meeting so this item was carried forward to this meeting. This General Business item is the opportunity to do this activity.

TABLE OF CONTENTS

TITLE 1 GENERAL PROVISIONS.....	23
CHAPTER 1.01 ESTABLISHMENT OF IVGID CODE	23
1.01.10 Declaration of Purpose	23
1.01.11 Establishment of Code.....	23
1.01.12 Outline of Code.....	23
1.01.13 Principles of Construction.....	24
1.01.14 Partial Invalidity	25
1.01.15 Effect of Headings.....	25
1.01.16 Meaning of "Section" and "Subsection".....	25
1.01.17 Amending the IVGID Code.....	25
1.01.18 [reserved].....	25
1.01.19 [reserved].....	25
CHAPTER 1.02	26
1.02.10 Definitions.....	26
CHAPTER 1.03	26
1.03.10 IVGID Logo	26
1.03.11 Authorized Use	26
TITLE 2 GOVERNANCE.....	29
CHAPTER 2.01 BOARD OF TRUSTEES.....	29
Appendix: NRS Chapter 318.....	29
Appendix: Washoe County Enabling Ordinances.....	29
2.01.10 Powers and Duties	29
2.01.11 Number of Members	29
2.01.12 Qualifications	29
2.01.13 Elections.....	30
2.01.14 Term.....	30
2.01.15 Vacancies	30
2.01.16 Officers.....	30
2.01.17 Standing Committees of the Board of Trustees	32
2.01.18 Ad Hoc Committees/Appointments	34
2.01.19 Master Plans and Strategic Planning	34

Appendix: Strategic Plan	36
Appendix: Diamond Peak Master Plan.....	36
Appendix: Community Services Master Plan	36
2.01.20 Board of Trustees Meetings.....	37
2.01.21 Accountability, Censure, Reprimand and Removal	42
Appendix: Nevada Ethics Law	42
2.01.22 Board of Trustees Compensation, Benefits and Liability.....	42
CHAPTER 2.02 DISTRICT GENERAL MANAGER.....	44
2.02.10 District General Manager	44
2.02.11 Qualifications	44
2.02.12 General Manager Compensation and Benefits	47
2.02.13 Official Duties.....	47
2.02.14 Senior Staff.....	51
2.02.15 Relations with Board of Trustees.....	52
2.02.16 Removal	52
Appendix: General Manager Contract	52
CHAPTER 2.03 DISTRICT LEGAL COUNSEL	52
2.03.10 Office Created	52
2.03.11 Compensation for Legal Services.....	52
2.03.12 Duties and Responsibilities.....	52
2.03.13 Appointment.....	52
Appendix: Legal Services Contract	52
TITLE 3 ADMINISTRATION & PERSONNEL.....	54
CHAPTER 3.01	54
3.01.10 Adoption of Personnel Management Framework.....	54
3.01.11 Administration	55
TITLE 4 PUBLIC RECORDS	59
CHAPTER 4.01	59
4.01.10 General.....	59
4.01.11 Requests.....	62
4.01.12 Responses	62
4.01.13 Records Retention Schedule.....	62
Appendix: Forms	63

Appendix: NRS Chapter 239 "Nevada Public Records Act"	63
TITLE 5 FINANCE	64
CHAPTER 5.01 DISTRICT FUNDS.....	64
5.01.010 Budget Process and Procedure.....	64
APPENDIX: STATE BUDGET FORMS	74
5.01.020 Revenue	74
5.01.030 Investments	77
5.01.040 CAPITAL ASSETS	84
5.01.060 Debt Management.....	90
5.01.070 Reports [reserved]	94
5.01.090 Penalties and Interest Charges on Delinquent Accounts and Collection Thereof	94
5.01.100 Audits	95
Appendix: Current Annual Budget	95
Appendix: Current Audit	95
Appendix: NRS Chapter 354 "The Local Government Budget and Finance Act"	95
CHAPTER 5.02 ACQUISITION, DISPOSITION & ENCUMBRANCE OF REAL & PERSONAL PROPERTY	95
5.02.010 Real Property	95
5.02.011 Personal Property [RESERVED]	96
5.02.012 Leases.....	96
5.02.013 Easements.....	96
5.02.014 Liens [reserved].....	100
5.02.015 Use of IVGID Facilities.....	100
CHAPTER 5.03 PURCHASING & PECURMENT	112
Appendix: NRS Chapter 332 "Local Government Purchasing Act"	112
CHAPTER 5.04 PUBLIC WORKS PROJECTS.....	112
Appendix: NRS Chapter 338	112
TITLE 6 Solid Waste.....	113
ARTICLE 1 - GENERAL PROVISIONS	118
1.1 Declaration	118
1.2 Short Title.....	118
1.3 Findings.....	118
1.4 Purposes	119

1.5 Policy.....	119
1.6 Severability.....	120
1.7 Posting.....	120
ARTICLE 2 - DEFINITIONS	120
2.1 Agent	120
2.2 Bear Shed	120
2.3 Bin.....	120
2.4 Biohazardous Waste.....	120
2.5 Board.....	120
2.6 Cart.....	120
2.7 Clean-Up	121
2.8 Collector.....	121
2.9 Commercial.....	121
2.10 ConstructionandDemolitionWaste.....	121
2.11 Container.....	121
2.12 County.....	121
2.13 Customer.....	121
2.14 DirectorofPublicWorks.....	122
2.15 District.....	122
2.16 Enhanced Wildlife Resistant Cart.....	122
2.17 Enhanced Wildlife Resistant Bin.....	122
2.18 Franchise Agreement.....	122
2.19 Garbage.....	122
2.20 General Manager.....	123
2.21 Hazardous Waste.....	123
2.22 Hearings Panel.....	123
2.23 Home-Generated Sharps Waste.....	123
2.24 Multi-Family Residential.....	123
2.25 Person.....	123
2.26 Recyclable Materials.....	123
2.27 Residential.....	124
2.28 Rubbish.....	124
2.29 Single-Family Residential.....	124

2.30 SolidWaste	124
2.31 Source Separated Recyclables.....	124
2.32 Wildlife Resistant Enclosure.....	124
2.33 YardDebris	125
ARTICLE 3 - SOLID WASTE RULES	125
3.1 Mandatory Garbage Service.....	125
3.2 Dumping or Burying	125
3.3 Burning.....	125
3.4 Accumulation of Solid Waste	125
3.5 Inspections.....	126
3.6 Franchise Agreement.....	126
3.7 Handling of Solid Waste	127
ARTICLE 4 - WASTE CONTAINERS	129
4.1 Storage and Collection Rules.....	129
4.2 Residential Service.....	130
4.3 Commercial Service	131
4.4 Multi-Family Residential Service	131
4.5 Dumpster Use, Location, and Enclosure.....	131
4.6 Medical Waste Containers	132
4.7 Service Identification	132
ARTICLE 5 - BILLING AND COLLECTION	132
5.1 Charges.....	132
5.2 Rates for Unclassified Premises.....	133
5.3 Roll-Out Collection Side Yard Service Charge	133
5.4 Penalty for Late Payment.....	133
5.5 Billing.....	134
5.6 New Connections	134
5.7 Disconnection.....	134
5.8 Transfer of Ownership	134
5.9 Person Responsible for Payment.....	134
5.10 Billing Time	134
5.11 Represents Lien on Property	134
5.12 Collection by Suit.....	135

5.13 Collection with Utility Charges of District	135
5.14 Discontinuance of Service upon Delinquency	135
ARTICLE 6 - DISCONTINUANCE OF SERVICE	135
6.1 Customer's Request for Discontinuance of Service	135
6.2 For Nonpayment of Bills.....	135
6.3 Disconnection.....	135
6.4 Liability for Bills	136
6.5 For Noncompliance with Rules.....	136
6.6 Refusal to Serve	136
ARTICLE 7 - ORDINANCE NON-COMPLIANCE.....	136
7.1 Violations	136
7.2 Authorized Remedies for Non-Compliance.....	137
7.3 Remedy Guidelines	139
7.4 Inspection	140
7.5 Grievances.....	140
TITLE 7 SEWER	142
ARTICLE 1 - GENERAL PROVISIONS.....	151
1.01 Short Title.....	151
1.02 Enabling Statutes.....	151
1.03 Words and Phrases	151
1.04 Sewer System.....	151
1.05 Separability.....	151
1.06 Posting.....	152
1.07 Relief on Application.....	152
1.08 Relief on Own Motion	152
1.09 Violations and Penalties.....	152
1.10 Ruling Final.....	152
ARTICLE 2 - DEFINITIONS	152
2.01 Additional Definitions.....	152
2.02 Administrative / Customer Service Account Charge	152
2.03 Agent	153
2.04 Applicant.....	153
2.05 Application.....	153

2.06 Average Month.....	153
2.07 Billing Period	153
2.08 Board	153
2.09 Building.....	153
2.10 Capacity Adjustment Factor.....	153
2.11 Capital Improvement Charge	154
2.12 Combined Sewer	154
2.13 Communal Sewer	154
2.14 Contractor.....	154
2.15 County	154
2.16 Customer	154
2.17 Customer Building Sewer	154
2.18 Date of Presentation	154
2.19 Director of Public Works	154
2.20 District.....	154
2.21 District Engineer	155
2.22 Fixed Charge	155
2.23 Fixture Unit	155
2.24 General Manager.....	155
2.25 Inspector.....	155
2.26 Law.....	155
2.27 Main Extension/Capacity Enhancement	155
2.28 Metered Service.....	155
2.29 Outside Sewer	155
2.30 Owner	155
2.31 Permanent Service.....	156
2.32 Permit	156
2.33 Person	156
2.34 Premises	156
2.35 Private Sewer.....	156
2.36 Private Sewer Delivery System.....	156
2.37 Publicly Owned Wastewater Treatment Plant/Treatment Plant.....	156
2.38 Sanitary Sewer.....	156

2.39 Service Classifications	156
2.40 Service Connection	157
2.41 Service Size for Billing Purpose	157
2.42 Sewer Main	158
2.43 Storm Sewer	158
2.44 Storm Water	158
2.45 Variable Cost.....	158
2.46 Waste.....	158
2.47 Wastewater	158
ARTICLE 3 - GENERAL RULES	158
3.01 Rules and Regulations.....	158
3.02 Purpose.....	158
3.03 Violation Unlawful.....	158
3.04 Protection from Damage	159
3.05 Violation.....	159
3.06 Notices to Customers	159
3.07 Notices from Customers.....	159
3.08 Public Nuisance.....	159
3.09 Disconnection.....	159
3.10 Means of Enforcement Only	160
3.11 Liability for Violation	160
3.12 Permits and Fees.....	160
3.13 Responsibility for Loss or Damage.....	160
3.14 Uniform Plumbing Code/ IAPMO	160
ARTICLE 4 - SEWER DEPARTMENT.....	161
4.01 Creation	161
4.02 General Manager	161
4.03 Director of Public Works	161
4.04 Inspections.....	161
4.05 Performance of Duties.....	162
4.06 Consolidations.....	162
4.07 Consequences of Denial of Entry or Access	162
4.08 Violation.....	162

ARTICLE 5 - USE OF PUBLIC SEWERS REQUIRED	162
5.01 Disposal of Wastes	162
5.02 Treatment of Wastes Required	163
5.03 Unlawful Disposal	163
5.04 Occupancy Prohibited	163
5.05 Sewer Required	163
ARTICLE 6 - APPLICATION FOR REGULAR SEWER SERVICE	164
6.01 Application	164
6.02 Forms of Application	164
6.03 Undertaking of Applicant	164
6.04 Individual Liability for Joint Service	165
6.05 Change in Customer's Equipment or Operations	165
6.06 Special Cases	165
6.07 Payment for Previous Service, Special Assessments, Ad Valorem Taxes, Recreational Revenue Charges and Assessments	165
6.08 Establishment of Credit	165
6.09 Re-establishment of Credit	165
6.10 Amount to Establish or Reestablish Credit	165
6.11 Applicability to Unpaid Accounts	165
6.12 Return of Deposits	166
6.13 Connection to System Required Within 540 Days of Application	166
6.14 Changes in Use or Uses of Served Property	166
6.15 Connection Charges	166
ARTICLE 7 - APPLICATION FOR REGULAR SEWER SERVICE WHEN MAIN EXTENSION OR CAPACITY ENHANCEMENT REQUIRED	167
7.01 Application	167
7.02 Investigation	167
7.03 Ruling	167
7.04 District Lines	167
7.05 District Extension	167
7.06 Determination	167
7.07 Refund Agreement	168
7.08 Extension by Customer	168

7.09 Point of Connection.....	168
7.10 Additional Components Required.....	168
7.11 No Obligation by District.....	168
7.12 All Costs to be Borne by Customer.....	168
ARTICLE 8 - PUBLIC SEWER	168
8.01 Extensions	168
ARTICLE 9 - BUILDING SEWERS, PRIVATE SEWER DELIVERY SYSTEMS, AND CONNECTIONS	169
9.01 Permit Required.....	169
9.02 Construction Requirements.....	170
9.03 Size and Slope.....	170
9.04 Separate Sewers.....	170
9.05 Old Building Sewers	170
9.06 Cleanouts.....	170
9.07 Individual Sewage Pump Stations.....	170
9.08 Service Connections.....	170
9.09 Backflow Prevention Devices.....	171
9.10 Maintenance	171
9.11 Connection to Public Sewer	171
9.12 Protection of Excavation.....	171
9.13 Maintenance of Building Sewer.....	171
9.14 Testing.....	173
9.15 Modification of Time-Frame.....	173
ARTICLE 10 - PUBLIC AND PRIVATE COMMUNAL SEWER SYSTEM CONSTRUCTION	173
10.01 Permit Required.....	173
10.02 Plans, Profiles and Specifications Required.....	173
10.03 Easements or Rights-of Way.....	173
10.04 Mitigation of Encroachments onto Easements and Rights of Way.....	174
10.05 Persons Authorized to Perform Work	174
10.06 Grade Stakes.....	174
10.07 Compliance with Local Regulations	174
10.08 Protection of Excavation	174

10.09 Design and Construction Standard.....	174
10.10 Completion of Sewer Required.....	175
ARTICLE 11 - USE OF PUBLIC SEWERS	175
11.01 Drainage into Sanitary Sewers Prohibited	175
11.02 Combined Sewers.....	175
11.03 Required Use of Grease Traps and Interceptors.....	175
11.04 Limitations on the Use of Garbage Grinders	176
11.05 Maintenance of Pretreatment Facilities.....	176
11.06 Preliminary Treatment of Wastes.....	176
11.07 Measurements and Tests	176
11.08 Types of Wastes Prohibited.....	177
11.09 Limitations on Wastewater Strength.....	177
11.10 Swimming Pools	178
11.11 Limitations on Point of Discharge	178
11.12 Cleaning of sewers within Common Interest, Commercial and Multi-Unit Developments.....	178
ARTICLE 12 - PERMITS AND FEES	178
12.01 Permit Required.....	178
12.02 Application for Permit.....	178
12.03 Compliance with Permit.....	178
12.04 Agreement	179
12.05 All Work to be Inspected	179
12.06 Notification.....	179
12.07 Correction of Work	179
12.08 All Costs Paid by Owner.....	179
12.09 Outside Sewers.....	179
12.10 Permit Optional	180
12.11 Special Outside Agreements	180
12.12 Street Excavation Permit.....	180
12.13 Liability	180
12.14 Final Inspection	180
ARTICLE 13 - SEWER CAPITAL IMPROVEMENT CHARGE.....	180
13.01 Capital Improvement Charge	180

13.02 Sewer System Repair Fund	180
13.03 Unimproved Parcels	180
ARTICLE 14 - BILLING AND COLLECTION	181
14.01 Billing	181
14.02 New Connections	181
14.03 Disconnection.....	181
14.04 Transfer of Ownership	181
14.05 Person Responsible for Payment.....	181
14.06 Billing Time	181
14.07 Penalties	181
14.08 Represents Lien on Property	181
14.09 Collection by Suit.....	182
14.10 Collection with Utility Charges of District.....	182
14.11 Discontinuance of Service upon Delinquency	182
14.12 Checks and Electronic Funds Transfers (EFT) not Honored by Bank.....	182
14.13 Service Charges.....	182
14.14 Outside Users	182
14.15 Multi-Unit Residential Accounts	182
14.16 Call-Out Service Charges.....	183
14.17 Disputed Bills.....	183
14.18 Policy for Appeal for Relief from Excessive Sewer Charges	183
ARTICLE 15 - DISCONTINUANCE OF SERVICE	184
15.01 Customer's Request for Discontinuance of Service	184
15.02 Customers Request for Shut Off and Turn On of Service.....	184
15.03 For Nonpayment of Bills.....	184
15.04 Liability for Bills	184
15.05 For Noncompliance with Rules.....	184
15.06 For Infiltration or Illegal Connections	185
15.07 For Unsafe Apparatus or Where Service is Detrimental or Damaging to the District or its Customers	185
15.08 For Fraudulent Use of Service	185
15.09 Restoration of Service	185
15.10 Refusal to Serve	185

TITLE 8 WATER.....	189
ARTICLE 1 - GENERAL PROVISIONS.....	198
1.01 Short Title.....	198
1.02 Enabling Statutes.....	198
1.03 Words and Phrases.....	198
1.04 Water System.....	198
1.05 Separability.....	198
1.06 Pressure Conditions.....	198
1.07 Maintenance of Water Pressure and Shutting down for Emergency Repairs.....	198
1.08 Tampering With District Property.....	199
1.09 Posting.....	199
1.10 Relief on Application.....	199
1.11 Relief on Own Motion.....	199
1.12 Penalty for Violation.....	199
1.13 Ruling Final.....	199
ARTICLE 2 - DEFINITIONS.....	199
2.01 Additional Definitions.....	199
2.02 Administrative / Customer Service Account Charge.....	200
2.03 Agent.....	200
2.04 Applicant.....	200
2.05 Application.....	200
2.06 Auxiliary Water Supply.....	200
2.07 Average Month.....	200
2.08 AWWA.....	200
2.09 Billing Period.....	200
2.10 Board.....	200
2.11 Building.....	200
2.12 Capacity Adjustment Factor.....	200
2.13 Capital Improvement Charge.....	201
2.14 Contractor.....	201
2.15 County.....	201
2.16 Cross-Connection.....	201
2.17 Customer.....	201

2.18 Customer Service Line	201
2.19 Customer Service Valve.....	202
2.20 Date of Presentation	202
2.21 Director of Public Works	202
2.22 District.....	202
2.23 District Engineer	202
2.24 Excess Water Charge	202
2.25 Fixed Charge	202
2.26 Fixture Unit	202
2.27 General Manager	202
2.28 House Piping	202
2.29 Inspector	203
2.30 Law	203
2.31 Main Extension and/or Capacity Enhancement	203
2.32 Meter Curb Stop.....	203
2.33 Metered Service.....	203
2.34 Owner	203
2.35 Permanent Service.....	203
2.36 Permit	203
2.37 Person.....	203
2.38 Premises	203
2.39 Private Communal Water System	204
2.40 Public Service Recreation.....	204
2.41 Regular Water Service	204
2.42 Service Classification.....	204
2.43 Service Connections.....	205
2.44 Service Size for Billing Purpose	205
2.45 Temporary Water Service	206
2.46 Variable Cost.....	206
2.47 Water Main.....	206
2.48 Water Waste	206
2.49 Will-Serve Letter.....	206
ARTICLE 3 - NOTICES	206

3.01 Notices to Customers	206
3.02 Notices from Customers.....	206
ARTICLE 4 - WATER DEPARTMENT	206
4.01 Creation	206
4.02 General Manager.....	207
4.03 Director of Public Works	207
4.04 Inspections.....	207
4.05 Performance of Duties.....	208
4.06 Consequences of Denial of Entry or Access	208
4.07 Violation.....	208
4.08 Water Pressure and Supply	208
ARTICLE 5 - APPLICATION FOR REGULAR WATER SERVICE	208
5.01 Form of Application.....	208
5.02 Calculation of Fixture Units.....	209
5.03 Undertaking of Applicant.....	209
5.04 Payment for Previous Service, Special Assessments, Ad Valorem Taxes and Recreational Revenue Charges.....	209
5.05 Installation Charges.....	209
5.06 Installation of Services.....	209
5.07 Changes in Customer's Equipment.....	209
5.08 Size and Location	209
5.09 Meter Curb Stop.....	209
5.10 Domestic, Commercial and Industrial Service Connection	210
5.11 Service Connections.....	210
5.12 Individual Liability for Joint Service	210
5.13 Special Cases.....	210
5.14 Water Used Without Service Application Being Made	211
5.15 Connection to System Required Within 540 Days of Application	211
5.16 Changes in Use or Uses of Served Property	211
5.17 General	211
5.18 Connection Charge.....	212
5.19 Subdivisions	212
5.20 Will Serve Letters.....	213

ARTICLE 6 - APPLICATION FOR REGULAR WATER SERVICE WHEN MAIN EXTENSION AND/OR CAPACITY ENHANCEMENT ARE REQUIRED	215
6.01 Application for Main Extension and/or Capacity Enhancement.....	215
6.02 General	215
6.03 Determination.....	215
6.04 Refund Agreement	215
ARTICLE 7 - GENERAL USE REGULATIONS	216
7.01 Number of Services per Premises	216
7.02 Water Waste	216
7.03 Responsibility for Equipment on Customer Premises	216
7.04 Damage to Water Distribution System.....	216
7.05 Ground Wire Attachments	216
7.06 Customer Service Valve on the Customers Property	217
7.07 Relief Valves and Regulating Valves.....	217
7.08 Service Size.....	217
7.09 Discontinued Service.....	217
7.10 Interruptions in Service.....	217
7.11 Ingress and Egress	217
7.12 Non-Existent Services	217
7.13 Pools and Tanks	217
7.14 Responsibility for Equipment	218
7.15 Use of Siphons	218
7.16 Periods of Water Shortage.....	218
7.17 Uniform Plumbing Code/IAPMO	218
7.18 Responsibility for Loss or Damage.....	218
ARTICLE 8 - METERS.....	218
8.01 Meter Charge.....	219
8.02 Meter Installations.....	219
8.03 Change in Location of Meters.....	219
8.04 Adjustment for Meter Errors - Over Registering	219
8.05 Adjustment for Meter Errors - Under Registering	219
8.06 Non-Registering Meters	219
ARTICLE 9 - BILLING	219

9.01 Billing.....	219
9.02 Meter Reading.....	219
9.03 New Connections	220
9.04 Disconnection.....	220
9.05 Transfer of Ownership	220
9.06 Person Responsible for Payment.....	220
9.07 Penalties	220
9.08 Represents Lien on Property	220
9.09 Billing of Separate Meters Not Combined.....	220
9.10 Water Used Without Service Application Being Made.....	220
9.11 Damages Through Leaking Pipes and Fixtures.....	221
9.12 Policy for Appeal for Relief from Excessive Water Charges	221
9.13 Checks and Electronic Funds Transfers (EFT) not honored by Bank.....	221
9.14 Collection by Suit.....	222
9.15 Collection with Other Utility Charges	222
9.16 Service Rates	222
ARTICLE 10 - DISCONTINUANCE OF SERVICE.....	222
10.01 Customer's Request for Discontinuance of Service	223
10.02 Customer's Request for Shut Off and Turn On of Service	223
10.03 For Non-Payment of Bills.....	223
10.04 Liability for Bills.....	223
10.05 Resumption of Service Charge.....	223
10.06 Unsafe Apparatus.....	223
10.07 Cross-Connections	224
10.08 Fraud or Abuse.....	224
10.09 For Noncompliance with Rules.....	224
ARTICLE 11 - PUBLIC FIRE PROTECTION	224
11.01 Use of Fire Hydrants	224
11.02 Hydrant Rental	224
11.03 Moving of Fire Hydrants.....	224
ARTICLE 12 - PRIVATE FIRE PROTECTION SERVICE.....	224
12.01 Payment of Cost	224
12.02 Combined Systems Prohibited	224

12.03 Use.....	225
12.04 Water Used for Fire Fighting not to be Charged.....	225
12.05 Water for Fire Storage Tanks	225
12.06 Violation of Agreement.....	225
12.07 Water Pressure and Supply	225
12.08 Rules.....	225
12.09 Responsibility of Equipment.....	225
ARTICLE 13 - TEMPORARY SERVICE.....	226
13.01 Duration of Service	226
13.02 Deposit	226
13.03 Installation and Operation	226
13.04 Responsibility for Meters and Installations.....	226
13.05 Supply From Fire Hydrant	226
13.06 Unauthorized Use of Hydrants.....	226
13.07 Credit.....	226
ARTICLE 14 - PUBLIC AND PRIVATE COMMUNAL WATER SYSTEM CONSTRUCTION	226
14.01 Permit Required.....	226
14.02 Plans, Profiles and Specifications Required.....	227
14.03 Easements or Rights-of-Way	227
14.04 Persons Authorized to Perform Work.....	227
14.05 Compliance with Local Regulations	227
14.06 Protection of Excavation.....	227
14.07 Design and Construction Standard.....	227
14.08 Completion of Water System Required	228
ARTICLE 15 - CAPITAL IMPROVEMENT CHARGE	228
15.01 Capital Improvement Charge	228
15.02 Duration.....	228
15.03 Unimproved Parcels	228
ARTICLE 16 - BACKFLOW AND CROSS CONNECTION REGULATIONS	228
16.01 General Policy.....	228
16.02 Backflow Definitions	229
16.03 Requirements.....	231

ARTICLE 17 - WATER CONSERVATION REQUIRED UNDER CERTAIN EMERGENCY CONDITIONS	233
17.01 General Policy	233
ARTICLE 18 – LANDSCAPING	234
18.01 Intent.....	234
18.02 Applicability.....	234
18.03 Requirements.....	234
18.04 Design and Construction Standards	234
18.05 Completion of Work Required.....	234
TITLE 9 BEACHES	239
Chapter 9 GROUP USE OF BEACHES	239
TITLE 10 COMMUNITY SERVICES	243
ORDINANCE NO. 7	246
ARTICLE I. GENERAL PROVISIONS	246
1. Short Title.....	246
2. Words and Phrases.....	246
3. Separability.....	246
4. Posting.....	246
ARTICLE II. DEFINITIONS.....	246
ARTICLE III. RECREATION PRIVILEGE ELIGIBILITY	248
ARTICLE IV. APPLICATION PROCEDURES	249
ARTICLE V. ASSIGNMENT OF PRIVILEGES	249
ARTICLE VI. RECREATION PASS	251
ARTICLE VII. RECREATION PUNCH CARD.....	252
ARTICLE VIII. GENERAL USE REQUIREMENTS	253
ARTICLE IX. AMENDMENTS	256
Policy Resolution No. 127 (Resolution No. 1619) Complimentary Recreation Privileges ..	260
Policy Resolution No. 135 (Resolution No. 1760) Temporary Dog Park at Village Green ..	260
Golf Complimentary Privilege Policy Board approved General Manager Job Description.	260

**Incline Village General Improvement District Code
("IVGID Code" or "District Code")**

ENABLING LAW AND BACKGROUND

Nevada Revised Statutes (NRS) CHAPTER 318 - GENERAL IMPROVEMENT DISTRICTS

<https://www.leg.state.nv.us/NRS/NRS-318.html>

- GENERAL PROVISIONS
- ORGANIZATION OF DISTRICTS
- BOARD OF TRUSTEES; DISTRICT POWERS
- TAXATION
- BOUNDARIES; INCLUSION AND EXCLUSION OF PROPERTY
- ANNEXATION OF TERRITORY BY DISTRICT CREATED TO FURNISH ELECTRICITY
- BORROWING, BONDS AND SPECIAL ASSESSMENTS
- MERGER, CONSOLIDATION AND DISSOLUTION OF DISTRICTS
- CORRECTIVE ACTION
- EFFECT OF CHAPTER 542, STATUTES OF NEVADA 1967

WASHOE COUNTY ENABLING ORDINANCES

- Ordinance 97 (1961)
- First Amendment to Ordinance 97 (1964)
- Second Amendment to Ordinance 97 (June 1965)
- Third Amendment to Ordinance 97 (November 1965)
- Fourth Amendment to Ordinance 97 (May 1969)

Other State Laws and Regulations Governing IVGID Authority and Responsibility

- Public Works (NRS Chapter 338)
- The Local Government Budget and Finance Act (NRS Chapter 354)
- The Local Government Purchasing Act (NRS Chapter 332)
- Nevada Open Meeting Law (NRS Chapter 241)
- Nevada Public Records Act (NRS Chapter 239)

Legislative Counsel Bureau (LCB) Background Paper 83-4 "General Improvement Districts."

<https://www.leg.state.nv.us/Division/Research/Publications/Bkground/BP83-04.pdf>

Fact Sheet-13-32: "Funding Economic Development in Nevada: General Improvement Districts" <http://www.nvnaco.org/wp-content/uploads/Funding-Econ-Dev-in-NV-Gen-Improvement-Districts.pdf>

“Legal Authority of General Improvement Districts in Nevada”

<http://www.sunvalleynevada.us/Paul%20Lipparelli%20on%20GIDs.pdf>

History of Incline Village General Improvement District

<https://www.yourtahoeplace.com/ivgid/about-ivgid/history-of-ivgid>

- Background of IVGID (Creation to Present)
- Crystal Bay GID combined with IVGID

IVGID Today

- Board of Trustees <https://www.yourtahoeplace.com/ivgid/board-of-trustees>
- Mission and Vision <https://www.yourtahoeplace.com/ivgid/about-ivgid/mission-vision>
- Departments <https://www.yourtahoeplace.com/ivgid/departments>
 - Administration
 - Senior Management Team
 - Legal
 - Finance & Accounting
 - Asset Management
 - Human Resources
 - Risk Management
 - Information Technology
 - Public Works
 - Water
 - Sewer
 - Solid Waste
 - Parks, Recreation, Community Services
 - Beaches
 - Recreational Center
 - Programs & Camps
 - Outdoor Recreation
 - Golf Courses
 - Tennis Center
 - Weddings & Events
 - Food & Beverage
 - Diamond Peak Ski Resort

Community Governance, Public Safety, Services and Administration Not Provided By IVGID

- United States Coast Guard <http://www.sierracgaux.org>
- United States Forrest Service <https://www.fs.fed.us>

- Tahoe Regional Planning Agency <http://www.trpa.org>
- North Lake Tahoe Fire Protection District <http://www.nltfpd.net>
- Nevada Division of State Lands <http://lands.nv.gov>
- Nevada Department of Transportation <https://www.nevadadot.com>
- Nevada Department of Wildlife <http://www.ndow.org>
- Washoe County <https://www.washoecounty.us>
 - Washoe County Commission
 - Washoe County Sheriff
 - Washoe County Emergency Operations Center
 - Washoe County District Attorney
 - Incline Village Justice Court
 - Washoe County Roads
 - Washoe County Assessors
 - Washoe County Planning, Zoning, and, Building and Land Use Permits
 - Washoe County Business Licenses
 - Washoe County Health Department
 - Washoe County Registrar of Voters
 - Washoe County Library
 - Washoe County Senior Services
 - Washoe County Animal Services
- Washoe County School District – Incline Village Schools <http://www.inclineschools.org/index.php/schools>
- Nevada Energy <https://www.nvenergy.com>
- Southwest Gas <https://www.swgas.com>
- Waste Management (Transfer Station) <http://www.wm.com/location/nevada/northern-nevada/inclinevillage/index.jsp>

TITLE 1 GENERAL PROVISIONS

CHAPTER 1.01 ESTABLISHMENT OF IVGID CODE

1.01.10 Declaration of Purpose

The Incline Village General Improvement District (herein referenced as "IVGID") Board of Trustees finds that it is desirable and in the public interest to codify IVGID ordinances, policies, resolutions, and practices into one District Code in order to provide an understandable and easy to use method of organization. The adoption of a District Code will provide the IVGID Board, Management, Staff, and the general public with an understandable and easy to use method of organization and classification that will serve as a coherent, convenient and logical compilation of IVGID ordinances, policies, resolutions, and practices.

1.01.11 Establishment of Code

This codification of IVGID ordinances, policies, resolutions, and practices shall be known as the "IVGID Code." All IVGID past ordinances, policies, resolutions, and practices which are now embodied in the IVGID Code are hereby repealed.

1.01.12 Outline of Code

Ordinances, policies, practices and procedures which are adopted from time to time shall be classified and organized under the following scheme of titles:

Title 1 - General Provisions

Title 2 - Governance

Title 3 - Administration & Personnel

Title 4 - Public Records

Title 5 - Revenue & Finance

Title 6 - Solid Waste

Title 7 - Sewer

Title 8 - Water

Title 9 - Beaches

Title 10 - Community Services

1.01.13 Principles of Construction

The provisions of this Code and all proceedings under it are to be construed to give effect its purposes. Unless the provisions of this Code otherwise specifically provide, or the context of this Code indicates to the contrary, the general provisions, rules of construction, and definitions set forth in the following sections of this chapter shall govern the construction of this Code. The following rules or meanings shall be applied in the construction and interpretation of the Code unless such application would be clearly inconsistent with the plain meaning or intent of the provisions of this Code:

- 1) **ACTS BY AGENTS.** When the Code requires an act be done by a person which may be legally performed by an authorized agent of that principal person, the requirement shall be construed to include all acts performed by such agents.
- 2) **COMPUTATION OF TIME.** In computing any period of time prescribed or allowed by this Code, the day of the act or event from which the period of time begins to run shall not be included but the last day of the period shall be included, unless it is a Saturday, a Sunday or a legal holiday. If the period of time prescribed or allowed is less than seven (7) days, Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this section, "legal holiday" means any statewide legal holiday specified by state law.
- 3) **GENDER.** Every word in this Code referring to the masculine gender shall also be construed to apply to females, and vice versa.
- 4) **GENERAL RULE.** Unless otherwise defined in this Code, all words and phrases shall be construed according to their plain meaning in common usage. However, words or phrases with a technical or special meaning shall be understood and construed according to that technical or special meaning if such is the intent of the Code Titles and Sections.
- 5) **PERSON.** The word "person" shall mean any of the following entities: natural persons, corporations, partnerships, associations, bodies politic or any other entity of any kind which is capable of being sued.
- 6) **SINGULAR AND PLURAL.** Every word in this Code referring to the singular number only shall also be construed to apply to several persons or things, and every word in this Code referring to a plural number shall also be construed to apply to one (1) person or thing.
- 7) **TENSE.** The use of any verb in the present tense shall not preclude the interpretation of the verb in the future tense where appropriate.

1.01.14 Partial Invalidity

If any chapter, section, sentence, clause or portion of this Code is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

1.01.15 Effect of Headings

The title, chapter, article, and section headings contained in this Code shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any title, chapter, article, or section of this Code.

1.01.16 Meaning of "Section" and "Subsection"

"Section" shall mean a section of this Code, unless one other source is specifically set forth. "Subsection" shall mean a subsection of the section in which the term occurs, unless one other section is expressly set forth.

1.01.17 Amending the IVGID Code

1) Describe process and procedure for amending the IVGID Code

The management of the Code shall be the responsibility of the District's General Manager. At the beginning of each calendar year, the District General Manager will meet with the Chair of the Board and determine a date for a review of the Code, if necessary. If the Code does not require review during that calendar year, the District General Manager shall notify the Board via his written monthly status report. If the District General Manager and the Board Chair agree that a review is necessary, then that information shall be communicated to the remaining Board members via the District's General Manager's written monthly status report **and** added to the District's long range calendar which is included in the Board's packet of materials for each and every Board meeting.

2) Establish schedule for regular review of the IVGID Code

At a minimum, the Code shall be reviewed, with the Board, every three (3) years.

3) Provide citations to relevant NRS in appendix to this section

1.01.18 [reserved]

1.01.19 [reserved]

CHAPTER 1.02

1.02.10 Definitions

As used in this Code, unless a different meaning is apparent from the context or is specified elsewhere in the Code:

[after first draft of Code is completed and reviewed by Board of Trustees, legal counsel will insert definitions of terms that appear throughout the IVGID Code that require definition]

CHAPTER 1.03

1.03.10 IVGID Logo

The IVGID logo for the Incline Village General Improvement District is adopted and approved as depicted here:



The IVGID logo is a registered trademark of IVGID.

1.03.11 Authorized Use

- 1) The District Clerk shall have custody and charge of the IVGID logo, and such other insignia that may from time to time be adopted pursuant to this Code. Except as provided by this Code, any seal, logo, insignia, or other symbol officially adopted for use by IVGID shall not be affixed to any instrument without the special warrant of the IVGID General Manager.
- 2) Use of the IVGID logo by any person, corporation, or organization shall be subject to the proper approval of the IVGID General Manager.
- 3) The IVGID logo shall not be used by any person, firm or organization for any false, misleading or malicious purpose.
- 4) The General Manager shall have the authority to approve use of the Incline Village logo by private businesses, under the following guidelines:

- a) No business shall make use of the trademark without execution of a written agreement with IVGID, which may be amended or revoked by IVGID at any time, without advance notice.
- b) Use shall be restricted to out-of-town advertising and local souvenir sales, as further prescribed herein. The trademark shall not be used on letterhead, business cards, or similar means of non-promotional business communication.
- c) The trademark shall only be used to identify Incline Village and Crystal Bay as a whole. The trademark shall not be used to identify a geographic entity larger or smaller than Incline Village and Crystal Bay. The trademark shall not be used to identify or promote individual businesses, products, or services, regardless of their location.
- d) The trademark shall not be used in conjunction with any utility, Nordic or downhill ski area, tennis complex, golf course, or beach facilities, except those owned by IVGID. The trademark shall not be used in conjunction with any recreational activity similar to any activity offered by IVGID.
- e) The logo shall only be used with the words, "Incline Village" attached immediately adjacent thereto. "Incline Village" shall be printed in the Albertus type style or another similar type style approved by IVGID in advance.
- f) If the logo is printed in color, it shall be printed in the logo's true blue/green colors (Pantone 3278 [Teal] and Pantone 293 [Blue]).
- g) The trademark shall not be used in combination with any other trademark, logo, or graphic representation, except "Tahoe's Tahoe."
- h) When used for advertising, it shall only be used in media, the principal audience of which is outside Incline Village/Crystal Bay. All such advertising shall explicitly contain the name of the private business which is offering the product or service. All such advertising shall also contain the language, "An independent business located within" (or other similar language approved by the General Manager), immediately adjacent to the Incline Village trademark. For print media, under no circumstances shall the Incline Village trademark exceed one-half the size of the trademark or name of the private business, product, or service.
- i) When used on souvenirs (such as shirts, jackets, and hats), distribution and sale of such souvenirs shall be limited to the boundaries of IVGID. If the name or trademark of a private business, product, or service also appears on the souvenir, it shall be physically located on a separate portion of the souvenir from the Incline Village trademark.
- j) The General Manager may ban the use of the trademark in any fashion he deems, if in his sole judgment, is not appropriate.
- k) A specific replica of each souvenir, prior to production, shall be furnished to the General Manager for approval. A general proof of each advertising piece, prior to its use, shall be furnished to the General Manager for approval. The general advertising proof shall identify the use and placement of the Incline Village trademark in relation to the use and placement of all other names or trademarks of private businesses, services, or products located in the advertising, to scale.
- l) The General Manager may, at his discretion, require one original of each advertising or souvenir to be furnished to, and kept by, IVGID.

- m) All uses of the Incline Village trademark shall be of the highest quality and good taste. The General Manager is hereby authorized to disapprove or revoke any use which in his judgment is not of high quality or in good taste.
 - n) The trademark shall not be used in conjunction with any business which engages in business practices which, in the General Manager's opinion, are not reputable, or have the appearance of being disreputable.
 - o) The trademark shall not be used in conjunction with any illegal or immoral activity, or tobacco, alcoholic beverages, drugs, sexual products or services, real estate sales or development, construction, massage, films, videos, records, magazines, newspapers, books, greeting cards, posters, or periodicals. The General Manager may add additional items to this list at his discretion.
- 5) All rights granted shall be non-transferable, non-assignable, and non-exclusive.
 - 6) The Board of Trustees hereby reserves the right to amend or revoke this section of the Code at any time, in which case all such rights granted hereunder shall be likewise amended or revoked.
 - 7) The Board of Trustees also reserves the right to review, alter, amend, and reverse any action of the General Manager under this Code section.
 - 8) This Code section shall not apply to businesses operating IVGID-owned facilities under contract.
 - 9) District Legal Counsel is hereby authorized to pursue, upon Board of Trustees approval, any and all civil remedies available at law or equity for use of the logo in violation of this Code.

*** we need documentations of registered trademark in appendix to this section –requested by SAH (asked Marketing)

Source: Policy and Procedure No. 113; Resolution No. 1517 (Use of Trademark by Private Businesses and Persons (April 24, 1986; amended 8/12/96)

click here to review in original form: https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf

M E M O R A N D U M

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Susan Herron, CMC
District Clerk

SUBJECT: Election of Board of Trustees Officers for the 2019 Term

DATE: November 29, 2018 (*carried over from December 12, 2018 meeting and January 23, 2019 meeting*)

In accordance with IVGID's Policy 3.1.0, Section 0.11 as follows:

0.11 Officers of the Board. The officers of the Board shall be elected as provided by Nevada Revised Statutes 318.085 and shall consist of a Chair of the Board, Vice Chair of the Board, Treasurer, and Secretary. The term of office shall be for one (1) year or until a reorganization of the Board is required.

District Clerk Susan Herron will conduct the elections of officers and the term of the elected officers will be January 1, 2019 through December 31, 2019 *and effective at the end of the meeting held on February 6, 2019.*

District Clerk Herron will open the agenda item by stating that the nominations for officers of the Board is now open and that she would like to begin with the position of Board Chair. Nomination(s) from the Board members will be taken and it is acceptable for a Board member to nominate themselves to an officer position. It is also acceptable for a Board member to nominate a slate of officers. Once all nomination(s) are made, District Clerk Herron will close the nomination(s) and call for a vote on each nomination(s). This process is repeated for each officer position. The exception would be if a slate of officers is nominated.

MINUTES

REGULAR MEETING OF JANUARY 23, 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, January 23, 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, and Kendra Wong. Trustee Tim Callicrate is ill and unable to attend tonight's meeting. Trustee Horan arrived shortly after roll call (at 6:02 p.m.)

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 Steve Price, Frank Wright, Dale Smith, Aaron Katz, Judith Miller, Margaret Martini, Denise Davis, Steve Dolan, and others.

(29 individuals in attendance at the start of the meeting which includes Trustees, Staff, and members of the public.)

C. PUBLIC COMMENTS*

Judith Miller said that she hoped that Trustee Callicrate doesn't have what she has however she does feel like she is on the mend. Ms. Miller then read from the 2016 Nevada Public Records Act, Bulletin #3 regarding responding to a request. She doesn't think that is what happens here and that it has not been her experience rather she has received a cursory reply or here is what you asked for. This is a State developed document and it shouldn't be any less for a small community rather we should have a more customer service reality. People have questions about missing charges therefore Staff should do as the State directive states and ask what do you mean, what do you want, have questions and go back and forth

until a determination is made. Maybe these charges are in a database and we should make our request as such.

Aaron Katz said that he has two written statements to submit and that the third one is working on will be presented either later today or tomorrow. Mr. Katz then said that he sent an email asking that the Board take the first item off of the Consent Calendar because it requires public discourse and should not be approved. The problem with past Boards is that they don't understand how rates are created and that this Board has to get down in the weeds on how they are created. First charge is an ad valorem tax for your business and we shouldn't be paying for your business. Now the skewed rate structure does another subsidy to these business, this is all in the rate structure, and it is called the capacity adjustment factor which Staff has come up with arbitrarily. Taking Diamond Peak as an example, and while he doesn't now the diameter of the pipe for snowmaking, he thinks it is less than ten inches. There is a multiplication done by x for excess water which no one pays except about one hundred and twenty customers so everyone gets a pass. If you don't have a big enough meter, you get a pass. If you are recreation, you use all the water you want and that includes Diamond Peak and the golf courses who are not being charged. Mr. Katz concluded by stating he will put all of this in writing with his other statements.

Jeff Sheldon said he wanted to speak about Last Tracks. The tickets were sold out by noon and it was reported that people were buying up to fifty tickets. You raised the price but they were still purchased so you aren't at the right price. He would like this problem addressed and he would suggest having an early sign up for passholders.

Frank Wright said Happy New Year. It seems to him like things are not getting any better rather they are getting worse. We have representatives that don't represent us and are cooperating with things that shouldn't be happening. This is not going to change because three of you are going to continue doing what you are doing. Chairwoman Wong, or Ms. TruBlueFacts, is horrible. Trustee Horan was a little late tonight and that was probably due to his having trouble getting over Mount Rose as he lives in Reno and has for the last six months. You don't live here and you haven't lived here for the past six months and that is why the District Attorney is looking into this. We can't find people, like our Staff, who will give us records rather they fabricate them and he finds that horrible. He asks for public records and he is told that the public records don't exist. We have an estimate and you need more than an estimate so we can account for the monies going through the District. Back to the question, why would the three of you do what you are doing to the people who are living here. Lie, lie, lie. It seems to be your modus operandi.

Isn't that right Trustee Horan that you were telling people who to vote for at the polls and that is why you got fired. Chairwoman Wong you say you weren't part of TruBlueFacts but you were.

D. APPROVAL OF AGENDA (for possible action)

Chairwoman Wong asked for changes to the agenda; Chairwoman Wong said that she would like to remove General Business Items G.2., G.3., and G.4. and that she would like the Board's input on that suggestion. All Board members agreed with these removals. Hearing no further changes, Chairwoman Wong approved the agenda has modified with those removals.

E. REPORTS TO THE BOARD OF TRUSTEES*

E.1. Verbal Legislative Update from Tri-Strategies representative(s)

Tri-Strategies' Victor Salcido gave a PowerPoint presentation which is included herewith by reference.

Trustee Morris said he can imagine the potential of a bill coming up and requiring some action by us and it is outside our meeting schedule; what happens then. Mr. Salcido said that they report through the General Manager and that they don't take action, one way or another, without direction from you speaking as a Board. If a quick decision is necessary, we will go through the General Manager's office. We take direction from the Board exclusively.

Chairwoman Wong said that there will be plenty of opportunity to give feedback and go back and forth. What we ran into two years ago was we weren't paying attention and then we were left scrambling. This allows us to be on the forefront which is exactly what we should do to prevent that situation from happening again. Mr. Salcido said that the weekly updates will be the helper as they are tasked with looking at every bill and if they could possibly affect GID's then they would go through you. There is no reason that at the next meeting we won't have a laundry list of bills to seek direction on.

Trustee Horan said it has been made very clear that they are to do nothing under the General Manager's direction rather it is the Board.

Chairwoman Wong asked if there were any bill draft requests that are circulating that are on your radar that we need to be aware of. Mr. Salcido said yes but that they don't have the official language so there is nothing to present yet. He knows that there are things coming that will affect GID's in particular and we have a bill draft request number and a title. The balance should occur very soon and right now it would be pointless to present them as there is no meat on the bone.

Chairwoman Wong thanked Mr. Salcido for the update; she appreciated it.

F. CONSENT CALENDAR (for possible action)

F.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)

Trustee Morris made a motion to approve the Consent Calendar as submitted; Trustee Horan seconded the motion. Chairwoman Wong asked for comments.

Trustee Horan said we discussed using the Consent Calendar at our last meeting and that we have done this in the past. Trustee Callicrate suggested reinstating this tool and using for items that are planned for and in the budget.

Trustee Dent asked what the perimeters are. Chairwoman Wong said it is typically for items that are budgeted, within the budgeted amount, and are a routine transaction. Trustee Dent said that this project wasn't within the budget amount but is a combination of two projects so does it fall into that classification. Chairwoman Wong replied yes.

Trustee Morris said that he is very comfortable with it being a consent item.

Chairwoman Wong hearing no further comments, called the question, the motion was passed unanimously by all the Trustees that were present.

G. GENERAL BUSINESS (for possible action)

G.1. Utility Rate Study Presentation – 2019 (Requesting Staff Member: Director of Public Works Joe Pomroy)

Director of Public Works Joe Pomroy gave the PowerPoint presentation that was included in the Board packet.

Trustee Horan said, regarding water, that several years ago we put in some new language for sprinklers and that it was adjusted for so many floors thus requiring a bigger line; do you keep track of those. Director of Public Works Pomroy said yes as it goes through a detailed plan check. We count the fixtures and depending on the amount, we resize for capacity. If you add fixtures, you have to put in a larger line. Trustee Horan asked what the numbers are. Director of Public Works Pomroy said about fifty percent size up with their remodels and that they see a high conversion rate and that happens on the commercial side as well.

Trustee Dent asked what the aeration project is. Director of Public Works Pomroy said it is \$1.1 million dollars. Trustee Dent said is that the one where the air comes out. Director of Public Works Pomroy said yes.

Chairwoman Wong said we are replacing a dump truck. Director of Public Works Pomroy said yes for about \$90,000. Chairwoman Wong asked about Burnt Cedar and when are we doing that project and what is the projected timeline. Director of Public Works Pomroy said in the fall and it is all inside the fence line and the interior of the building therefore he wouldn't expect any impact to the parking. The project is being constructed elsewhere and then installed at our facility.

Trustee Morris asked, regarding the Burnt Cedar pool, will there be any detriment or benefit. Director of Public Works Pomroy said this project is the water treatment plan and that Staff is finishing the bid documents and that this might be another one where it is built and then shipped to us for installation.

Trustee Dent said, referencing the slide on agenda packet page 50, that we are now collecting up to \$27 million dollars so is that the new projected cost of this project. Director of Public Works Pomroy said no, still on track for \$23 million plus or minus. Trustee Dent said he thought we were stopping in 2021 but this slide shows continuation to 2025. Director of Public Works

Pomroy said the first two years we were not collecting money and that he will correct that slide.

Trustee Horan said in looking at the map that the first segment goes just past Sand Harbor, the second segment goes just past Chimney Beach and then the third segment goes up to the meadows before it goes over to Spooner Summit. Director of Public Works Pomroy said that is correct.

Trustee Dent asked if the United States Army Corps of Engineers (USACE) is helping us with the design. Director of Public Works Pomroy said that we do continue to work with USACE as there is some money in the 595 Fund and that they are trying to gather up the unspent money and then trying to get a Project Partnership Agreement. To date, we have gotten good feedback. There is not \$23 million dollars more like one million or one million and some change; we hope to have some very good news on this very soon.

Trustee Dent said so there is no need to collect additional operating revenue. Director of Public Works Pomroy said we do to make sure we have stable reserves. Trustee Dent followed up and asked about working capital per our policies. Director of Public Works Pomroy said if that is met then there is no need to collect additional revenue. Trustee Dent then asked for a report on Policy 19.1.0 and Practice 19.2.0. Director of Public Works Pomroy said we can provide that and noted that it will be part of the budgeting process as well.

Trustee Morris asked if we have many users at the upper end of the spectrum. Director of Public Works Pomroy said for the 3-inch to 8-inch we have about 100 customers and that we have about 9,000 customers/ equivalent residential units with the bulk of the demand being single family and condos.

Chairwoman Wong said in looking at this comparison chart, one of the reasons our rates are so much lower is because of water. Director of Public Works Pomroy said take a place like Tahoe City. There were a bunch of small, private water districts that were all built in the 20's through the 40's. As they got absorbed into that utility, there was a lot of work to do. When ours was built, all the hydrants, etc. were put in place and done well. We saw this happen when Crystal Bay merged into our system and they had to do a bond to do the work and make it happen prior to merging.

Trustee Horan asked about the five percent increase for connection fees and if that was to upgrade the pipe size as well. Director of Public Works Pomroy said yes exactly and that you pay for the higher size but you get a credit for the old one or in another words you pay the difference between the original and the upgrade. If you are a brand new connection, you pay the full connection fee. This is about new demand, not existing demand.

Trustee Dent said, referencing agenda packet page 12 at the bottom, that it talks about reserve balances and why are we dealing with the fund balance. Director of Public Works Pomroy said that the reserve fund is the \$1.9 million and we do met that. Trustee Dent asked what is the breakdown of our actual working capital in reference to policies/practices 19.1.0 and 19.2.0. Director of Finance Eick said when you talk about working capital, it is different and it is monitored which you can see in the Comprehensive Annual Financial Report. For the working capital requirement, we come out around \$7 million dollars which is well over by \$2 million dollars. We have money on hand for future projects, in the Utility Fund, and we don't invest it for more two or three years. We also have nominal liabilities thus working capital is the least of our concerns. Staff will show this to you during the budgeting process as well as the history. Trustee Dent said if Staff can do a breakdown and show that to us it would help him to vote in favor of this item for this year. Director of Finance Eick said that will be in the February 27 packet.

Chairwoman Wong said that she has a broad question – the proposed overall increase is four percent yet last year we projected a 3.2% increase so therefore the upcoming year is always slightly more than projected. What is driving that slight increase and should it be a bit higher for greater predictability. Director of Public Works Pomroy said we are looking at the end fund balance and setting revenues and expenses to reach that so future year rate increase could vary but that they are coming out on average and that he is always looking at a five year window which is the best he can do. Chairwoman Wong said so it is always going to be the tail and is that appropriate knowing where we are headed with the effluent pipeline in 2020 and 2021. Director of Public Works Pomroy said the project is not increasing rather the cost increase is on salaries and wages and that over the past five years it has not been on the capital side. He doesn't expect the effluent pipeline to be driving increases. District General Manager Steve Pinkerton said that this is a snapshot in time and that next year the Director of Public Works will have a lot more information for the work we did this fall which will help with the costs on the effluent pipeline. Also, if we secure funding with USACE that will help. Things could get better in one place, worse in another,

so overall it stays the same. Director of Public Works Pomroy said he agrees and that in the fall, we will have a re-scoping of the project and that the smart pig will say the actual scope that needs replacement.

Trustee Morris said on the time scale, we did all that work last year and while he isn't asking for the results, what is the estimate time for knowing that information. Director of Public Works Pomroy said that the technical data has been collected however that contractor is not a licensed engineer. We give it to HDR and then they tell us what this data means. They are working through that scope to tell us what it means and they are receiving this data. In the fall, we may have that information. Trustee Morris said if you take the effluent pipeline out of the equation and as you expect a linear 3.5% increase, what are the factors that could negatively impact that or are there things or concerns that you might have. Director of Public Works Pomroy said that the biggest things are usually about replacing mechanical equipment as it is not cheap to replace that is why we do our best to balance it over five years. It could be one million dollars a year, every year, and that in looking at the ten largest items, this one is a year early and then the next one is two years early and then the next one is on time so we are spreading it out and staying ahead of both the failure and technology curves. Another item are the residential water meters as we try and do those all at once and get it done within twelve months. The bigger headache is replacing the meter reading software and billing software which occurs in a six to ten year window unless technology leapfrogs faster. Staff is already starting to put those out in the CIP so they get included in the rates. Trustee Morris said that he appreciates that explanation as it helps him.

Trustee Horan said that budgeting is not a science rather it is an art form. One of the advantages we have is lot of experience in data. Staff does a really good job and he is very comfortable with our approach.

Chairwoman Wong said thank you as this is her fifth year and she learns more and more. Given the timeline etc., we will see the highlights in at least three or four meetings which gives us time to absorb and prepare for our budget cycle; thank you.

Trustee Horan said that he is comfortable with moving forward and that he would like to see Trustee Dent get his answer and that other than that, the presentation is pretty sound.

Trustee Morris made a motion that the Board of Trustees has provided direction and comment to Staff on the 2019 Five Year Utility Rate Study and proposed utility rate increase for 2019 and therefore direct District Staff to prepare documents and Utility Rate Schedules for a one year average 4.0% utility rate increase in accordance with the 2019 Utility Rate Study. Trustee Horan seconded the motion. Chairwoman Wong asked for comments.

Trustee Horan said other than that one question by Trustee Dent, he support this motion. District General Manager Pinkerton said that on February 27, Staff will provide that answer. Trustee Morris asked Trustee Dent if he was okay with that. Trustee Dent said he thinks the Board should have that information. District General Manager Pinkerton said that Staff can bring that back when we set the date or at the February 6 meeting. Chairwoman Wong says that she appreciates that it stays within a reasonable rate of information and doesn't think it is outrageous nor unreasonable and that she thanks Staff for keeping that in mind.

Hearing no further comments, Chairwoman Wong called the question – Trustee Horan, Morris, and Wong voted in favor of the motion and Trustee Dent voted opposed; the motion passed.

Chairwoman Wong called for a break at 7:40 p.m.; the Board reconvened at 7:47 p.m.

- G.2. **Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong) - REMOVED FROM THIS AGENDA**
- G.3. **Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong) - REMOVED FROM THIS AGENDA**
- G.4. **Election of Board Officers for 2019 – effective at the end of this meeting - REMOVED FROM THIS AGENDA**
- H. **DISTRICT STAFF UPDATE (for possible action)**
 - H.1. **General Manager Steve Pinkerton**

To include status of Mountain Golf Course Clubhouse

District General Manager Pinkerton gave a brief update to his submitted status report.

Chairwoman Wong said regarding the comment about ad valorem tax, can Staff please remind us what it is for, etc. Director of Finance Eick said the General Fund is the only recipient of these tax proceeds and they are used for administrative services. The Facility Fees are specific to facilities and beaches and that doesn't go to either the General Fund or the Utility Fund. The comment painted a way too broad a brush as they are specific. District General Manager Pinkerton add that all the utility districts around the lake get this as well and if one is doing an apples to apples comparison, this is different from off the hill because in most places the utility rates are one hundred percent supported by rates.

District General Manager Pinkerton said that he had an inquiry about the Washoe County lands bill and specifically the land across from the Incline High School. There have been changes in leadership at the Washoe Tribe and since December 21, we haven't been able to make any contact with the United States Forest Service. We are ready to go and when Staff brings back the Community Services Master Plan we will talk about time frames as well as when we go back to Washington D.C. we will be discussing that as well.

Trustee Morris asked about the ski hill, Last Tracks and those tickets as there have been a lot of concerns voiced and wondered what is the opportunity to do additional Last Tracks events this season. District General Manager Pinkerton said that the limited number we have are economical and that we try and do as many as is financially feasible. While we can adjust the policies, there will always be someone who doesn't like them. There is also an opportunity to do a private event which is much more expensive. We did raise the rates but that didn't reduce the demand. As we are a service organization, our emphasis, for next year, will be to focus on our passholders which should allay a lot of the concerns and noted that this is a good problem to have.

H. APPROVAL OF MINUTES (for possible action)

H.1. Regular Meeting of December 12, 2018

Chairwoman Wong asked for any changes, none were offered. Chairwoman Wong deemed the minutes dated December 12, 2018 approved as submitted.

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

I.1. District General Counsel Jason Guinasso

There was no report by District General Counsel.

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*

Trustee Morris said that he and Trustee Callicrate were at the short-term rental meeting on Monday. Trustee Callicrate was asked a couple of questions by Washoe County Commissioner Berkbigler but that IVGID has no horse in that race.

Trustee Dent said that the League of Cities has their in vesture luncheon scheduled for a week ago but that got cancelled and has now been rescheduled for February 1, 2019.

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.

Steve Dolan thanked the District General Manager for telling us that nothing is happening at this regarding the Washoe County lands bill. Washoe County Commissioner Berkbigler did lay out two alternatives which seemed to be much more reasonable thus Staff might want to contact her to work faster through that process. Curious as to what was the result of the FEMA funding on the culvert as they were going to be funding in a large way and we haven't heard anything lately so would love to hear about it. Regarding water quality and fire concerns, his concern is algae bloom. On the pier study, he is wondering if there is anything formal happening with either Fire or Sheriff and that he would love to hear a statement on that topic. As to the sale of the old elementary school, he is hearing that Washoe County wants to turn it into a parking lot and he would hate to see it become a parking lot.

Margaret Martini said that she also attended the short term rentals meeting and that it was pretty clear that Washoe County has the intention to use that school as

a parking lot for the whole village and that instead of running shuttle busses it would be a place to park and do a one stop. It could be very cost effective for the District not to do a complete route. They would provide parking for overflow, houses, short term rentals, etc. Making it a place for public parking would be a really good public service and a good use of that land that is not in the scenic corridor especially if it can be piggybacked with public transportation.

L. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)

District General Manager Pinkerton reviewed the Long Range Calendar with the following updates/changes:

- ✓ Moved deferred agenda items to next meeting (02/06).
- ✓ Pier – Sheriff and Fire Chief have expressed interest in coming to next meeting.
- ✓ Staff would like to have a truncated CIP tour, right before the meeting, on March 18 – probably start at 4 or 4:30. Chairwoman Wong may have a conflict but she requested that the tour not be held up due to her schedule.

Trustee Dent said that he didn't see anything for Ordinance 7 on the Long Range Calendar. District General Manager Pinkerton said it is part of the code and that he anticipates tackling that in June or July.

Chairwoman Wong asked that the letter from Washoe County School District dated January 11, 2019 be added to the February 26 meeting agenda.

M. ADJOURNMENT (for possible action)

The meeting was adjourned at 8:07 p.m.

Respectfully submitted,

Susan A. Herron
District Clerk

Attachments*:

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

Submitted by Aaron Katz (9 pages): Written Statement to be included in the written minutes of this January 23, 2019 regular IVGID Board Meeting – Agenda Item C – Public Comments – More staff propaganda – Aren't you so pleased at the effort of Diamond Peak staff, combined with the effort of IVGID Public Works, to make the cost of the water Diamond Peak uses for manmade snow, at a *lower* per unit cost, than you and I pay?

Submitted by Aaron Katz (23 pages): Written Statement to be included in the written minutes of this January 23, 2019 regular IVGID Board Meeting – Agenda Item F(1) – Proposed expenditure of \$124,395 on ADA paving and grading improvements at Mountain Golf Course restrooms adjacent to tees at holes 6/13

**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
JANUARY 23, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM
C – PUBLIC COMMENTS – MORE STAFF PROPAGANDA – AREN'T YOU
SO PLEASED AT THE EFFORT OF DIAMOND PEAK STAFF, COMBINED
WITH THE EFFORT OF IVGID PUBLIC WORKS, TO MAKE THE COST
OF THE WATER DIAMOND PEAK USES FOR MANMADE SNOW,
AT A LOWER PER UNIT COST, THAN YOU AND I PAY?**

Introduction: The Public Works Newsletter for December 2018¹ which accompanied our December water/sewer bills for the period ending December 4, 2018 points to the inequity of our water/sewer rates and the subsidies afforded to all of the public's recreational facilities. And that's the purpose of this written statement.

So Let's Review the Facts IVGID Staff Have Shared in the Subject Newsletter: The following are IVGID staff's quotes. *You just can't make this stuff up!*

- "Your Public Works team is proud to (supply)...Diamond Peak...with the water needed to put the first layers of snow on the mountain;"
- "Snowmaking (at Diamond Peak) can demand as much as 3,000 gallons (of water)/minute;"
- Water "consumption for median single family users during (the current) month (totaled): 1,909 (gallons per user);"²
- "Snowmaking (at Diamond Peak) can demand as much as 3,000 gallons (of water)/minute;"
- "On a peak summer day the community can use 5.6 million gallons (of water) in a day;"
- "During a cold spell this winter, Diamond Peak used nearly 3 million gallons (of water) in a 24 hour period;"
- During this 24-hour period, Diamond Peak's use for snowmaking represented [sixty-five percent (65%)] of the "4.6 million gallons used community wide;"
- "Diamond Peak can use (up to)...40 million gallons of water for snowmaking use in a season;"
- "As a comparison, a golf course at Lake Tahoe (and remember, IVGID has two of them) typically uses 75 million gallons per year in irrigation water;"
- "It takes a lot (of) coordination" for your "Diamond Peak snowmaking staff (to) stay in close contact with (IVGID's Public Works) water staff;"

¹ A copy of that newsletter is attached as Exhibit "A" to this written statement.

² Look at your December 2018 water/sewer bill. Mine says "consumption for median single family user during current month: 1909." What does yours say?

- “It takes a lot (of) coordination” for your Public Works “water staff to stay...in close contact with... Diamond Peak’s snowmaking staff;”
- “This (coordination) is important because we want to make sure the water tanks are full and pumps are ready” for Diamond Peak’s demands; and,
- “Your Public Works team is proud to support (their) Diamond Peak snowmaking team” colleagues.

Before I Comment on These Admissions, Let’s Get Some Other IVGID Staff Admissions Pertaining to Community Water Use on the Table: And just so no one thinks I am making this stuff up, these admissions come from the latest water/sewer rate study which began on January 24, 2018³, continued on February 7, 2018⁴, and culminated with actual approval on April 11, 2018⁵.

- “Water and sewer rates are...made up of three main components - fixed (aka ‘ready to serve costs’) charges, variable charges (based upon the units of water consumed/effluent discharged denoted at 1,000 gallons of water = 1 ‘unit’⁷), and capital improvement charges”⁶ [“funds (for) the replacement of water and sewer infrastructure”⁷ (aka “CICs”)].

- The median Residential User’s 2018 monthly Water Utility bill totals \$39.79⁸;
- Of this sum, \$30.84 represents a fixed charge. Since the number of units of water consumed varies, no portion of those charges is included in the fixed charge portion⁹;
- Therefore the additional \$8.95/month in a median Residential User’s monthly Water Utility charges represents actual variable water consumed (in this case 5,967 gallons billed at an average charge of \$1.50/1,000 gallons/usage);

³ See pages 27-81 of the packet of materials prepared by staff in anticipation of the Board’s regular January 24, 2018 meeting [“the 1/24/2018 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-24-18.pdf)].

⁴ See pages 50-68 of the packet of materials prepared by staff in anticipation of the Board’s regular February 7, 2018 meeting [“the 2/7/2018 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_2-7-18.pdf)].

⁵ See pages 47-151 of the packet of materials prepared by staff in anticipation of the Board’s regular April 11, 2018 meeting [“the 4/11/2018 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_4-11-2018.pdf)].

⁶ See page 36 of the 1/24/2018 Board packet.

⁷ See page 37 of the 1/24/2018 Board packet.

⁸ See page 73 of the 1/24/2018 Board packet.

⁹ See page 71 of the 1/24/2018 Board packet.

- Notwithstanding, the actual charges for residential water customers' variable water use increases ("excess water charges") at 20,000 gallons use/month [from \$1.50/1,000 gallons to \$2.43/1,000 gallons ("1st tier")], and then again at 60,000 gallons use/month [from \$2.43/1,000 gallons to \$3.73/1,000 gallons (2nd tier)]¹⁰;

- Because of the way fixed charges for commercial water costs are calculated¹¹, essentially none is assessed an excess water charge;

- Because of a "Public Service Recreation" exemption IVGID has created *for itself*¹², its recreation facilities "*are not subject to excess water charges;*"

- Thus 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 customers;

- 2018-19 water CICs are budgeted to generate a total of \$1,679,000 in water CIC revenues, system wide¹³;

- CIC charges are calculated the same way fixed charges are calculated. Therefore the monthly base charge (here \$14.80) is multiplied by the CAF. And again, since all residential customers with ¾"

¹⁰ See page 149 of the 4/11/2018 Board packet.

¹¹ Fixed charges are calculated by multiplying the monthly base rate (here \$11.23) by a "capacity adjustment factor" ("CAF"). The CAF is based upon the diameter of a water user's supply line. All residential customers with ¾" or 1" water supply lines are assigned a CAF of "1." Commercial water customers are assigned a CAF which varies from a low of "1" (if they have a ¾" diameter water supply line), to as high as "76.65" (if they have a 10" water supply line). So if a commercial water customer has a 3" water supply line, he/she/it is assigned a CAF of "10" meaning he/she/it is not assessed an excess water charge as long as he/she/its monthly use does not exceed 200,000 gallons (20,000 gallons times a CAF of "10"). If he/she/it has a 6" water supply line, he/she/it is assigned a CAF of "33.33" meaning he/she/it is not assessed an excess water charge as long as his/her/its monthly use does not exceed 666,600 gallons (20,000 gallons times a CAF of "33.33"). And if he/she/it has a 10" water supply line, he/she/it is assigned a CAF of "76.65" meaning he/she/it is not assessed an excess water charge as long as his/her/its monthly use does not exceed 1,533,000 gallons (20,000 gallons times a CAF of "76.65"). Since essentially no commercial water customers other than IVGID even approaches these threshold levels of use, essentially none is assessed an excess water charge.

¹² See §2.40 at page 115 of the 4/11/2018 Board packet. 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.*"

¹³ See page 76 of the 1/24/2018 Board packet.

or 1" water supply lines are assigned a CAF of "1," for them \$14.80/month represents the median residential customer's monthly water CIC¹⁰;

- Because of the way CICs are calculated for commercial water customers¹¹, *none* pays his/her/its proportional fair share¹⁴ compared to residential customers;
- The median Residential User's 2018 monthly Sewer Utility bill Totals \$62.22⁸;
- Of this sum, \$52.76 represents a fixed charge, assuming the discharge of no effluent whatsoever¹⁵;
- 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 variable water use, and it is calculated at \$3.10/1,000 gallons¹⁶. Therefore the additional \$9.46 in the median residential sewer customer's monthly utility bill represents actual variable sewer effluent discharged (3,051 gallons);
- Since all residential customers with ¾" or 1" water supply lines are assigned a CAF of "1," of this sum \$18.30 in the median residential customer's monthly sewer utility bill⁸ represents sewer CICs; and,
- Because of the way CICs are calculated for commercial water customers¹¹, *none* pays his/her/its proportional fair share¹⁷ of sewer CICs compared to residential customers.

¹⁴ Even though a commercial water customer with a 3" water supply line pays "10" times the monthly CIC a residential water customer pays, he/she/it can place demands on the public's water system which can be 104.77 times those of the median residential water customer (200,000 versus 1,909 gallons use/month). Or if we are talking about a commercial water customer like Diamond Peak or the Championship Golf Course with a 10" water supply line, even though it pays "76.65" times the monthly CIC a residential water customer pays, its *daily* demands on the public's water system can be a whopping 1,572 times those of the *monthly* demands of the median residential water customer (3,000,000 gallons use/day versus 1909 gallons use/month).

¹⁵ See page 72 of the 1/24/2018 Board packet.

¹⁶ See page 98 of the 4/11/2018 Board packet.

¹⁷ Even though a commercial sewer customer with a 3" water supply line pays "10" times the monthly CIC a residential sewer customer pays, he/she/it can place demands on the public's sewer system which can be 104.77 times those of the median residential water customer (200,000 versus 1,909 gallons of water use/month). Or if we are talking about a commercial sewer customer like Diamond Peak or the Championship Golf Course with a 10" water supply line, even though it pays "76.65" times the monthly CIC a residential sewer customer pays, its *daily* demands on the public's sewer system can be a whopping 1,572 times those of the *monthly* demands of the median residential sewer customer (3,000,000 gallons use/day versus 1909 gallons of water use/month).

Because of IVGID’s “Public Service Recreation” Exemption, its Residential Water Customers Are Involuntarily Subsidizing IVGID’s Wasteful Use of Water For Snowmaking Purposes at Diamond Peak, to the Tune of Nearly \$80,000 Annually: Based upon the above-facts, hopefully the reader can see that if Diamond Peak were charged the same excess water charges that residential water customers are charged, it would be charged roughly \$80,000 more in excess water charges than what it currently is charged¹⁸.

And Remember, This Involuntary Subsidy Only Applies to IVGID’s Use of Water for Snowmaking Purposes at Diamond Peak: When IVGID’s water use is calculated insofar as its two golf courses, parks, and athletic fields are concerned, all of which are operated as if they were “for profit” commercial enterprises, we’re probably looking at \$500,000 or more in subsidies! Let me put this into perspective. Since IVGID reports there are about 4,000 single family residential water customers¹⁹, *each of us is paying nearly \$125 more in our water rates, annually, to financially support IVGID’s money losing commercial recreation businesses!*

But It’s Not Just Diamond Peak’s Water Usage For Snowmaking Purposes Residential Water Users Are Subsidizing. It’s the CICs Diamond Peak Are Assessed: Based upon the above-facts, hopefully the reader can see that Diamond Peak’s *daily* snowmaking demands on the public’s water system are 1,572 times those of the *monthly* demands of the median residential water customer¹³. When we extrapolate Diamond Peak’s snowmaking demands over a thirty (30) day month, we see they are 47,160 times the monthly demands of the median residential water customer. Or during the 24-hour period referenced in the newsletter¹, “nearly 3 million gallons” or sixty-five percent (65%) of the “4.6 million gallons used community wide.” Yet the monthly water CIC charges Diamond Peak is billed, totals only 76.65 times the water CIC charges residential water customers are billed¹¹. Or \$1,402.70/month. And if Diamond Peak snowmaking is billed this monthly charged for a full twelve months in a year²⁰, \$16,832.34. Or roughly 1% of total water CICs (\$1,679,000) charged to all water users. If Diamond Peak were charged 65% of water CICs charged to all water users, it would be paying \$1,091,350 annually.

What Kind of Specific Infrastructure Must IVGID Acquire/Maintain to Handle the Specific Water Demands of Diamond Peak That Are Not Necessary for the Water Demands of the Rest of Our Community? Listen to the newsletter: “we want to make sure the water tanks are full and pumps are ready (as) snowmaking can demand as much as 3,000 gallons a minute, which is equal to 50% of

¹⁸ 40 million gallons of water usage in a roughly three month (mid-November to mid-February) ski season, less 4,599,000 gallons (1,533,000 gallons/month) allowed before excess water charges kick in because of the way the CAF is calculated = 35,401,000 gallons of excess water charged at \$3.73/1,000 gallons (\$132,046) versus the normal \$1.50/1,000 gallon charged (\$53,102) = \$78,944.50.

¹⁹ See page 87 of IVGID’s 2015-16 Budget (https://www.yourtahoeplace.com/uploads/pdf-ivgid/2015-2016_Budget_Book.pdf). Of the 4,226 accounts IVGID reports, less than 200 are commercial.

²⁰ I do not know the answer to this question given IVGID staff have not shared this information with the public.

the rate we are able to pump water out of the Lake.” Pumps that can pull 6,000 gallons of water out of the Lake *per minute*, water tanks that can hold “nearly 3 million gallons in a 24-hour period,” 10” water supply lines that can deliver this much water for Diamond Peak’s snowmaking requirements. This is massive compared to the demands of the remainder of our community. So why are local property owners shackled with the costs of this amount of infrastructure which is only necessary for Diamond Peak? Stated differently, I hope the reader sees that ***each residential water customer is subsidizing Diamond Peak’s water use for snowmaking purposes by roughly \$269 annually!***

Notwithstanding, “Your (IVGID) Public Works Team is Proud to Support Diamond Peak(‘s) Snowmaking” Efforts!

Conclusion: Maybe most residents don't care about how IVGID staff repeatedly use propaganda tools such as the subject newsletter to paint the picture they're so just and transparent. Maybe they don't care about how the IVGID Board does nothing whenever its members are put on notice of inappropriate staff action, such as the action the subject of this written statement. But maybe some do care because they realize that not only do their *ad valorem* taxes, BFFs and/or RFFs, and user fees all financially subsidize IVGID’s commercial money losing business enterprises, so do their water, sewer and solid waste disposal rates/charges!

If you are a residential water customer and do not feel IVGID’s water rates are fair, just, reasonable²¹, non-discriminatory and non-preferential to you when compared to Diamond Peak’s rates, just for manmade snowmaking no less, maybe the next time IVGID staff notice public meetings as a prelude to recommending rate increases, you will become more vocal now that you know the truth.

And the next time an IVGID staff member thanks one of his/her 966 other IVGID colleagues²², understand the real reasons why.

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

²¹ NRS 704.040(2) makes unjust and unreasonable public utility rates unlawful.

²² See <https://transparentnevada.com/salaries/2017/incline-village-general-improvement-district/>.

EXHIBIT "A"

DECEMBER 2018

1220 Sweetwater Road, Incline Village NV 89451 . OFFICE HOURS: M-F 8 AM to 4:30 PM
P: (775)832-1203 . F: (775)832-1260 . PW@IVGID.ORG . WWW.IVGIDPUBLICWORKS.ORG



**IVGID PUBLIC WORKS
WILL BE CLOSED:**
TUESDAY, DECEMBER 25
TUESDAY, JANUARY 1
MONDAY, JANUARY 21
MONDAY, FEBRUARY 18

**IVGID PUBLIC WORKS
IS AVAILABLE 24/7
TO RESPOND TO
WATER/SEWER
EMERGENCIES
CALL 775-832-1203**

**HHW & E-WASTE DROP-OFF
SITE WILL BE CLOSED:**
TUESDAY, DEC. 25
THURSDAY, DEC. 27
TUESDAY, JAN. 1

HOURS FEB. 1-OCT. 31:
TUES & THURS 3-5 PM

WINTER HOURS NOV. 1-JAN. 31:
TUES & THURS 3-4:30 PM

**SITE WILL BE CLOSED
DURING SEVERE WEATHER
TV'S ARE NO LONGER ABLE
TO BE ACCEPTED**



FREE HOLIDAY TREE RECYCLING

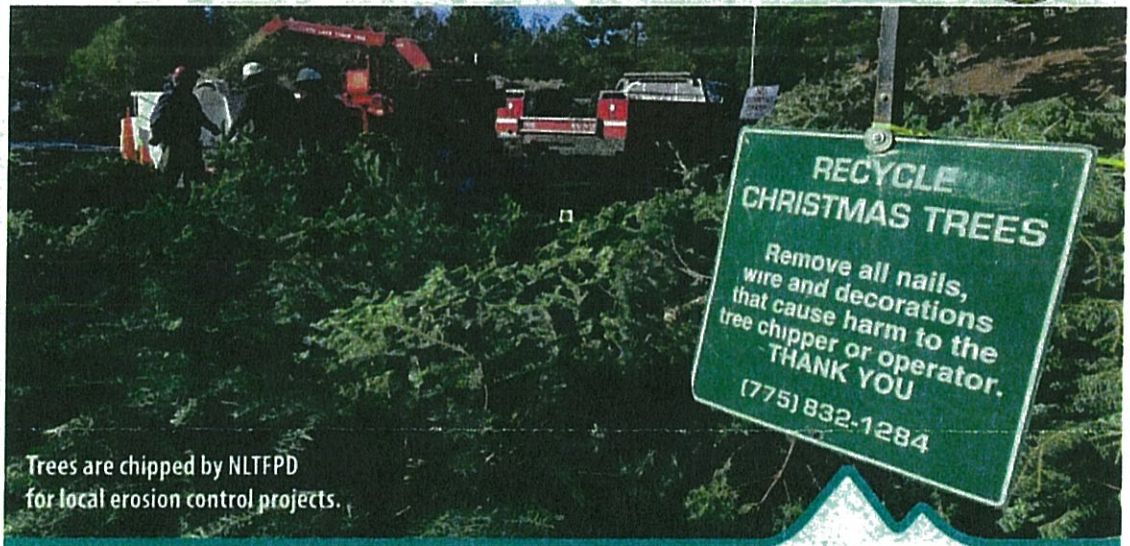
Curbside Tree Collection Week: Jan. 7 to 11, 2019— ONLY

Waste Management will collect clean trees for recycling, curbside on service day, for free, only during this week. Maximum tree length allowed curbside is 3 foot. Larger trees must be cut down to 3 foot lengths. Trees must be must clean of all decorations, nails and tree stands. Curbside collection IV/CB residential customers only. Trees place curbside any other time are considered excess trash and will be subject to extra charges/violation.

Drop-Off at Preston Field : Open Dec. 21, 2018 to Jan. 28, 2019

Trees can be any size, but must be clean of all decorations, nails and tree stands.

PROGRAM PARTNERS:



Trees are chipped by NLTFPD for local erosion control projects.

Visit YOURTAHOEPLACE.COM/PUBLIC-WORKS

or call 775-832-1203 for details

Find us on Facebook! 

Events are weather permitting & subject to change

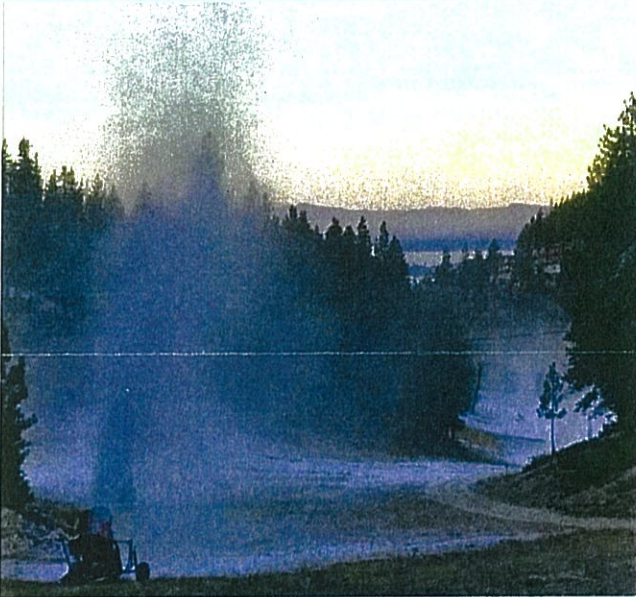


* * * *Happy Holidays!* * * *
from all the staff at Ivgid Public Works

WASTE MANAGEMENT SERVICE DELAY HOTLINE 855-894-9650

Call the toll-free hotline to keep informed of changes in your collection schedule.

WATER USE FOR SNOWMAKING AT DIAMOND PEAK



Your Public Works team is proud to support the Diamond Peak snowmaking team with the water needed to put the first layers of snow on the mountain. You may think all we do is just print the bill then mail it to the Ski Resort and ask for payment, but it takes a lot more coordination than that. Diamond Peak's snowmaking staff stays in close contact with our water staff to inform them of how much water they plan to use and for how long. This is important because we want to make sure the water tanks are full and pumps are ready. Snowmaking can demand as much as 3,000 gallons a minute, which is equal to 50% of the rate we are able to pump water out of the lake. On a peak summer day the community can use 5.6 million gallons in a day. During a cold spell this winter, Diamond Peak used nearly 3 million gallons in a 24-hour period with a total of 4.6 million gallons used community wide. Diamond Peak can use from 20 to 40 million gallons of water for snowmaking use in a season depending on how much natural snow falls.

As a comparison, a golf course at Lake Tahoe typically uses 75 million gallons per year in irrigation water.

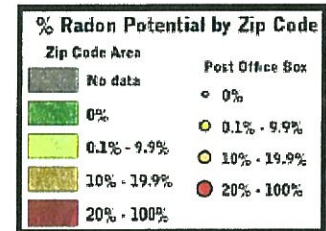
RADON

in Incline Village and Crystal Bay

JANUARY is NATIONAL RADON ACTION MONTH

TEST KITS ARE **FREE** TO NEVADA RESIDENTS*
JAN. 1 - FEB. 28, 2019

Go to **Incline Village Recreation Center**
980 Incline Way, Incline Village
Monday-Friday, 6 a.m. to 9 p.m., Saturday-Sunday, 7 a.m. to 8 p.m.



RADON is the **primary cause of lung cancer among nonsmokers.** The naturally occurring radioactive gas can seep into homes from the ground, increasing your risk for lung cancer. Elevated levels of radon have been found in **36%** of homes tested in Incline Village & Crystal Bay.

**Radon test kits are \$10.00 for out of state residents, however, some free California radon program kits may be available at TRPA, 128 Market St., Stateline, and at the IV Rec Center in January.*

FOR MORE INFORMATION
Call the Radon Hotline
888-RADON10 (888-723-6610)
or visit www.RadonNV.com

**Nevada
Radon
Education Program**



Follow @NVRadonProgram
 Visit @NevadaRadonEducation

IVGID has included this notice as a public service announcement but has no formal role in the activity or event.

REMEMBER TO TURN OFF YOUR WATER EVERY TIME YOU LEAVE!

Visit the winterization information on our website: www.yourtahoeplace.com/public-works/water/winterization

**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
JANUARY 23, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM
F(1) – PROPOSED EXPENDITURE OF \$124,395 ON ADA PAVING AND
GRADING IMPROVEMENTS AT MOUNTAIN GOLF COURSE
RESTROOMS ADJACENT TO TEES AT HOLES 6/13**

Introduction: Here staff have agendized this matter to approve the expenditure of \$124,395 for ADA modifications (paving and grading only) to two Mountain Course bathrooms (adjacent to the tees at holes 6 and 13). “This project does *not* include remodeling the interior(s) of the on-course restrooms” themselves. That cost was estimated in 2016/17 to cost an additional \$70,000 just in construction costs. And by the time we revise that estimate to today’s dollars, add a 10% cushion for “contingencies,” and add allocated staff costs, we’ll probably have added an additional \$100,000 to the cost. And if we add the \$7,855 which has already been spent on the bathroom remodel project (see discussion below), *that’s a total remodel cost of over \$233,000!*

Notwithstanding this agenda item is identified as “review(ing and) discuss(ing)” a proposed construction contract for the limited paving and grading scope of work identified above, it has been placed on the Consent Calendar where by definition, *there can be no discussion*. For this reason yesterday I e-mailed the Board asking that this item be removed from the Consent Calendar and placed on the General Business calendar so it could be discussed as represented¹.

As I and others have observed and spoken out, *we have a problem with our staff*. Staff are more interested in creating meaningless “busy work” for themselves which to the less informed justifies their employment (and here an unnecessary allocation of staff time) as well as their over-compensation and over-benefits, rather than looking out for the best interests of local property owners who involuntarily finance their endeavors. Consequently, staff DON’T share the truth with the Board and the public about so many things, which requires members of the public to do the research the Board should be doing. Non-transparency, half-truths, and deceit describe your beloved staff. And here, as the Board and the public will see, we have another glaring example.

Let’s Review the Facts IVGID Staff Have Shared Insofar as This Project is Concerned:

American Disabilities Act (“ADA”): Staff use “ADA” as their version of a Chicken Little (“the sky is falling”) mantra to justify so many marginally necessary projects. And here we have another example. ADA does NOT mandate that all existing IVGID facilities be upgraded to today’s ADA standards. It is only when existing facilities are renovated or replaced that ADA comes into play. Only because staff want to heat these two restrooms, must local property owners contend with ADA. So given the cost, *why the push to waste so much of the RFF on this marginally beneficial project?*

¹ A copy of that e-mail is marked as Exhibit “A,” and it is attached to this written statement.

The Scope of the Project: According to the “Background” section of the January 11, 2019 staff memorandum in support of this proposed expenditure², “this project will re-**construct** the cross slopes and pave access from the golf cart parking to...bathrooms at holes #6 and #13...entry.” But this description is NOT what was approved by the Board for 2016/17.

Officially, this project number is 3241BD1402. Its label is “ADA Access to #6 Tee Restroom.” The project was first approved for fiscal year 2016/17. To demonstrate this approval I have attached as Exhibit “B” to this written statement, page 22 from the 2016/17 Annual Capital Improvement Budget³ (“the 2016/17 CIP Budget”). And to demonstrate the scope of this project, I have attached as Exhibit “C” to this written statement, page 201 from the 2016/17 CIP Budget⁴. As the Board and the public can see, the scope of this project as approved was *NOT* to construct anything but rather, to:

“evaluate the most efficient way to address ADA requirements for access to the restroom at Hole #6.”

So how did the scope of this project turn into what is now before the Board?

Staff have a penchant for changing projects approved by past Boards to meet staffs’ unilateral needs and then sneaking those changes into subsequent approvals for other appropriations, like this one, so staff can proclaim afterwards that their changed projects have been approved by the Board. And that’s exactly what happened here.

For the 2017/18 Budget the Board approved an expenditure of \$95,000 for this same project number is 3241BD1402. To demonstrate this approval I have attached as Exhibit “D” to this written statement, page 22 from the 2017/18 Annual Capital Improvement Budget⁵ (“the 2017/18 CIP

² See page 5 of the packet of materials prepared by staff in anticipation of the Board’s regular January 23, 2019 meeting [“the 1/23/2019 Board packet” (https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-23-19.pdf)].

³ Go to https://www.yourtahoepace.com/uploads/pdf-ivgid/2016-2017_CIP_Budget.pdf. An asterisk has been placed next to this project.

⁴ “Project Summaries” like this one are not shared with the Board before the CIP budget is adopted. Rather, they are created by staff after the CIP budget is adopted. Therefore they don’t necessarily represent the CIP project the Board envisioned when it approved that budget. If you don’t believe me, take a look at the Board packet materials presented to the Board prior to its adoption of a budget. A good example would be the packet of materials prepared by staff in anticipation of the Board’s May 23, 2018 [https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-23-18.pdf (“the 5/23/2018 Board packet”)]. At pages 112-130 of the 5/23/2018 Board packet the reader will see where staff has included materials supporting its request for adoption of a CIP budget. Conspicuously absent are any project summaries.

⁵ Go to https://www.yourtahoepace.com/uploads/pdf-ivgid/2017.6.28_Capital_Improvement_Budget_2017-2018_7-20-2017.pdf. An asterisk has been placed next to this project.

Budget”). And to demonstrate the scope of this project, I have attached as Exhibit “E” to this written statement, page 8 of the 1/23/2019 Board packet. As the Board and the public can see, the scope of this project has been modified to read as follows:

“regrade and pave a golf cart parking location and accessible route to each (Mountain Golf Course) restroom.” Since “this work will be completed in conjunction with the remodel of the interior and exterior of the on-course restrooms (the subject of) 2016/17 CIP Budget Project #3241BD1503),” and that project addresses “on course bathrooms, #6 & #3/14,” the instant project extends to “on course bathrooms, #6 & #3/14.”

Yet staff didn’t change the \$95,000 budget amount which was the same \$95,000 projected budget amount back in 2016/17 when the project summary differed (see Exhibit “C”).

Moreover, for the 2018/19 Budget, (the fiscal year we’re currently into) this project has been removed altogether⁶ notwithstanding *insufficient funds have been appropriated to complete this expanded project* (see discussion below).

The Truth as to Why We’re REALLY Remodeling These Two Restrooms – To Provide Heat to Two Bathrooms on the Mountain Course: If the reader re-examines the 2017-18 “Project Summary” for this project (Exhibit “F”), he/she will learn the following:

“ADA compliance is necessary to procure the Washoe County Building Department permits to allow...remodel(ing) of the interior and exterior of the(se two) on-course restrooms.”

In other words, *if we didn’t remodel these two bathrooms, we wouldn’t have to prosecute the subject expanded paving and grading project!*

If the reader re-examines the 2016-17 “Project Summary” for these bathroom remodels (Exhibit “G”), he/she will learn what this “remodel” really consists of, as well as the reasons justifying this expenditure.

“The general purpose of this project is to...maintain the value of the Mountain Golf Course asset (by)...improv(ing) our facilities...that directly or indirectly reflect on our guest experience (because)...both restrooms receive regular customer complaints... Currently there is no heat in either restroom. This project will provide heat to make the restrooms more comfortable during...shoulder seasons and early mornings...All interior fixtures and finishes need to be replaced. The floors will be recoated and sealed...Because of the existing condition of the siding...new exterior siding will be evaluated⁷...rather than paint(ed).”

⁶ See page 3 of IVGID’s 2018/19 CIP Budget approved May 23, 2018 [“the 2018/19 CIP Budget” (https://www.yourtahoepace.com/uploads/pdf-ivgid/FY_18-19_5-year_CIP_Book_-_FINAL_5.23.18.pdf)]. This page is attached as Exhibit “E” to this written statement.

The real reason for this project is to allow staff to spend over \$233,000 of local property owners' RFF to address the vital CIP of providing heat to two existing restrooms on the Mountain Course. In other words, each local property owner must pay nearly \$28.50 so those few persons who actually play golf at the Mountain Course and complain that these two restrooms are not heated will have heat.

Just like the skewed surveys staff create to gauge local property owners' true priorities, have staff ever told those few persons who actually play at the Mountain Course and complain, or the Board, or the public, that this single project is going to cost each local property owner whose property is assessed the RFF \$28.50? And if local property owners were asked if they were in favor of this expenditure if the cost were going to be an additional \$28.50, how many do you think would answer yes?

Where is the Money Coming From to Fund This Grading and Paving Project? According to page 6 of the 1/23/2019 Board packet, "\$95,000 was included in the 2017/18 CIP Budget...to complete the proposed (grading and paving) work...of which there is a total of \$87,300 carried forward and currently available...(An) additional \$37,095 will come from (another budgeted CIP)...Pavement Maintenance of Cart Paths...(Project #3241LI1205)." But,

1. Understand that none of this money actually pays for remodeling of either of the two restrooms. Listen to the following admission on page 5 of the 1/23/2019 Board packet: "this project does *not* include remodeling the interior of the on-course restrooms...That project...will be executed in the 2019/20 fiscal year."

2. Where has \$7,700 of the \$95,000 included in the 2017/18 CIP Budget been spent? Each year staff creates a schedule of "carry over" CIPs. For 2018/19 staff created such a schedule and for the subject project, they expressly declared that: no sums had been expended as of May 11, 2018; and, the "budget carry over" was \$95,000⁸. Since we should have an additional \$7,700 available to pay for this project, *what did staff spend the missing \$7,700 on?*

3. And now we're going to "rob Peter to pay Paul?" If the reader re-examines the 2016/17 Five Multi-Year CIP (Exhibit "B"), he/she will see that every year sums are budgeted expressly for Mountain Course cart pathway pavement maintenance. For: 2016/17 - \$55,000; 2017/18 - \$55,000⁹; 2018/19 - \$55,000¹⁰; 2019/20 - \$65,000; and, 2020/21 - \$15,000. A total of \$245,000!

⁷ Make no mistake that if the exterior siding for these bathrooms is replaced rather than re-painted, the estimate for this project will most assuredly increase.

⁸ Attached as Exhibit "H" to this written statement is staff's "carry over schedule" for Mountain Golf CIP expenditures. An asterisk has been placed next to the represented "budget carry over."

⁹ If the reader examines Exhibit "D," he/she will see that \$45,000 was actually budgeted for this project.

¹⁰ If the reader examines Exhibit "F," he/she will see that \$45,000 was actually budgeted for this project.

Assuming these expenditures are truly necessary¹¹, here we see that over \$37,000 of presumably “vital” cart pathway pavement CIPs are *not* being completed. In other words, staff want the Board to irresponsibly “kick the (cart pathway pavement maintenance) can down the road.”

4. Or maybe the cart pathway pavement CIP is a “virtual” fund available for future unbudgeted CIPs, more expensive than budgeted CIPs, and/or more expensive budgeted CIPs because their “scopes of work” have been unilaterally expanded. We’ve seen this before. This is precisely what the “Recreation Administration” entry for our RFF represents. So it’s not out of the realm of possibility for our staff to have created a phony CIP and caused the appropriation of monies to its prosecution, when they know there will be no such project. Isn’t this exactly what occurred with the effluent pond liner project which was never undertaken, yet all of the monies appropriated for that project were spent? Since the funds have been appropriated and according to GM Pinkerton their expenditure is “unrestricted,” according to our GM they have become “available” for his future unidentified, unbudgeted and unappropriated pet projects.

Allocated Staff Costs: GM Pinkerton asserts that *every* CIP includes some unidentified cost allocated to staff time associated with that project. Except that’s not what the Board and the public believe. We believe that when the Board budgets \$95,000 for a CIP, the full \$95,000 goes to the contractor performing that work. If that isn’t the case, then essentially no CIP can ever come in under budget.

GM Pinkerton attempts to justify this allocation by declaring that if staff didn’t perform this work, someone else would have to and at a higher cost than what we incur in house. I and others I know believe that in most cases, we can secure comparable work from outside vendors for less. Of course we’ll never know because staff will never outsource something they can arguable perform themselves and besides, it would be counter-productive to their continued employment.

Then there’s the need for our staff to perform any services. Let’s take the subject project for example. We have prepared and published a Request for Proposal (“RFP”) which presumably includes plans and specifications for the scope of work represented. And we have received a proposal acceptable to staff from a licensed and competent¹² contractor. Assuming the contractor knows how to perform its job, exactly what is left for our staff to do other than inspect the finished product prior to making payment? And whatever it may be, for 15% *more* than the contractor’s bid?

Conclusion: So let’s recap:

¹¹ If the reader examines Exhibit “H,” he/she will see that there are no “carry-over” funds meaning that all which has been budgeted for this function have been spent either on cart pathway pavement maintenance, or something else (see discussion below).

¹² We know the contractor is competent because staff tells the Board and the public that they have vetted that contractor and are pleased with what they’ve learned.

#1: Notwithstanding this agenda item is identified as “review(ing and) discuss(ing)” a proposed construction contract for the limited paving and grading scope of work identified above, it has been placed on the Consent Calendar where by definition, *there can and will be no discussion;*

#2: Notwithstanding the scope of this project as originally approved by the Board was supposed to be for nothing more than “evaluat(ion of) the most efficient way to address ADA requirements for access” to the Mountain Course bathroom at hole #6 (see Exhibit “C”), under staff’s unilateral tutelage, this project has “crept” into *actual construction;*

#3: Notwithstanding the scope of this project as originally approved by the Board was eventually to “re-construct the...excessive...cross slopes and pave access from the golf cart parking to the single “restroom at Hole #6” (see Exhibit “C”), it has “crept” into reconstruction of Mountain Course “bathrooms at holes #6 and #13;”

#4: Notwithstanding that when staff unilaterally changed the “scope of work” for this project in 2017/18 (Exhibit “F”) it represented to the Board and the public that “this work w(ould) be completed in connection with the remodel of the interior and exterior of the on-course restrooms (2016/17 CIP Budget Project #3241BD1503),” *now it won’t;*

#5: Notwithstanding that when the Board originally budgeted for this project in 2017/18 (Exhibit “D”) staff represented to the Board and the public (Exhibit “F”) that the cost of construction would be \$85,000, and the cost of allocated staff time would be \$10,000 (for a total of \$95,000), page 4 of the 1/23/2019 Board packet now represents that the construction costs for this project, including contingencies, will total \$109,395 (a 28.7% increase), and the cost of allocated staff time will total \$15,000 (a 50% increase);

#6: Notwithstanding staff’s schedule of “carry over” CIPs for this project for 2018/19 (Exhibit “H”) represented to the Board and the public that none of the \$95,000 budgeted had been expended as of May 11, 2018 and that the “budget carry over” was the full \$95,000, \$7,700 of these funds have been expended on something else which in essence means that the cost of this project is *even \$7,700 more* than the \$124,395 cost represented;

#7: Notwithstanding staff have told the Board and the public that \$45,000 of local property owners’ collective Recreation Facility Fee (“RFF”) was necessary to repair and maintain the Mountain Course’s cart pathways in 2018/19, we now see that *at least \$37,095 isn’t;* and,

#8: Notwithstanding staff have told the Board and the public that this is a “vital” project mandated by ADA, its true purpose is provide heating to two Mountain Course bathrooms at a cost of \$233,000, or in all probability, a whole lot more.

Because now the Board and the public can see where their RFF/Beach Facility Fee (“BFF”) really go, I ask the Board to vote no for this appropriation because if it doesn’t, it will end up wasting \$233,000 or more on the heating of these two bathrooms which can be far more prudently spent. Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!

EXHIBIT "A"

Request to Remove Agenda Item F(1) From the Consent Calendar/Reject ADA Access Paving and Grading Project Which DOESN'T Include ADA Modifications to Restrooms Themselves

From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>
To: Wong Kendra Trustee
Cc: Horan Phil <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Callicrate Tim <tim_callicrate2@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>
Subject: Request to Remove Agenda Item F(1) From the Consent Calendar/Reject ADA Access Paving and Grading Project Which DOESN'T Include ADA Modifications to Restrooms Themselves
Date: Jan 22, 2019 1:13 PM

To Chairperson Wong and the Other Honorable Members of the IVGID Board:

Agenda Item F(1) on the Consent Calendar calls for appropriating \$124,395 for PARTIAL modifications (exterior paving and grading) to two Mountain Course bathrooms.

I ask this agenda item be transferred to the General Business Calendar so it can be adequately discussed evaluated. And then I ask that the proposed expenditure be rejected.

My reasons are as follows:

#1: Notwithstanding this agenda item is identified as "review(ing and) discuss(ing)" a proposed construction contract for the limited paving and grading scope of work identified above, it has been placed on the consent calendar where by definition, there can be *no discussion*;

#2: Notwithstanding the scope of this project as originally approved by the Board was for nothing more than "evaluat(ing) the most efficient way to address ADA requirements for access" to the Mountain Course bathroom at hole #6, under staff's unilateral tutelage, the scope has "crept" into *actual construction*;

#3: Notwithstanding the scope of this project as originally approved by the Board was eventually to "re-construct the... excessive...cross slopes and pave access from the golf cart parking to the single "restroom at Hole #6," under staff's unilateral tutelage, the scope has "crept" into reconstruction of partial Mountain Course grading and pavement improvements at "bathrooms at holes #6 and #13;"

#4: Notwithstanding that when staff unilaterally changed the "scope of work" for this project in 2017/18 it represented to the Board and the public that "this work w(ould) be completed in connection with the remodel of the interior and exterior of the on-course restrooms (2016/17 CIP Budget Project #3241BD1503)," *now it doesn't*;

#5: Notwithstanding that when the Board originally budgeted for this project in 2017/18 staff represented that the cost of construction would be \$85,000 and the cost of allocated staff time would be \$10,000 (for a total of \$95,000), page 4 of the 1/23/2019 Board packet represents that the construction costs for this project, including contingencies, will total \$109,395 (a 28.7% increase) and the cost of allocated staff time will total \$15,000 (a 50% increase);

#6: Notwithstanding staff's schedule of "carry over" CIPs for this project for 2018/19 represents to the Board and the public that none of the \$95,000 budgeted was expended as of May 11, 2018 and that the "budget carry over" for this project was the full \$95,000, according to page 6 of the 1/23/2019 Board packet \$7,700 of these funds have been expended on "something" which in essence means the cost of this project has just increased by even \$7,700 more;

#7: Notwithstanding staff have told the Board and the public that \$45,000 of local property owners' collective RFF was necessary to repair and maintain the Mountain Golf Course's cart pathways, we now see that at least \$37,095 isn't because it can be so easily diverted to the subject project; and,

#8: Notwithstanding staff have told the Board and the public that this is a "vital" project mandated by ADA, its true purpose is provide heating to two Mountain Course bathrooms at a cost of \$233,000 or in all probability, a whole lot more.

We have a problem with our staff. They're more interested in creating "busy work" for themselves which justifies their employment (and here an unnecessary allocation of their staff time) rather than looking out for the best interests of local property owners who involuntarily finance their endeavors.

Staff uses the "ADA" sky is falling mantra to justify so many marginally necessary projects. And here we have another

example.

ADA does NOT mandate that every existing IVGID facility be modified to today's ADA standards. So why then is our staff suggesting to the Board otherwise? How many local property owners who are ADA disabled play golf on the Mountain Course? NONE? One?

And not that our facilities are here primarily for the public's use, but how many ADA disabled members of the public played a round of golf at the Mountain Course last year? NONE? One? Why don't you Board members ask staff?

We're so cash rich that we can afford to spend nearly \$233K (including the costs to actually renovate the restrooms themselves) of local property owners' Recreation Facility Fee ("RFF") because a couple of golfers would prefer to have two of the bathrooms at the Mountain Course heated without understanding the adverse impact to nearly 8,200 local property owners?

Do any of you think this is a prudent expenditure? Given it is NOT necessary and will likely be used by NO ADA DISABLED PROPERTY OWNERS, do we not have anything else to spend RFF money on? SO WHY APPROVE IT let alone on the Consent Calendar?

I ask the Board to really take charge of what is going on here and to vote a resounding NO.

Respectfully, Aaron Katz

EXHIBIT "B"



2016/2017 - 5 Year Project Summary Totals

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	

Division	Project Number	Project Title	2016 - 2017	2017 - 2018	2018 - 2019	2019 - 2020	2020 - 2021	Total	Project Type	Number of Projects
	3197AT721	2008 JD TC125 Core Harvester #621	-	-	11,900	-	-	11,900	F	1
	3197AT722	2008 Bandit Brush Chipper #625	-	-	-	40,000	-	40,000	F	1
	3197AT723	2010 JD 1500 Arecore Aerator #640 - Shared	-	13,900	-	-	-	13,900	F	1
	3197NL451	2001 John Deere Pro Gator #484	32,000	-	-	-	-	32,000	F	1
	3197NL452	2004 John Deere Pro Gator #545	-	32,000	-	-	-	32,000	F	1
	3197NL453	2004 John Deere Pro Gator #546	-	-	32,000	-	-	32,000	F	1
	3197NL454	2004 John Deere Pro Gator #547	-	-	-	-	-	32,000	F	1
	3197NL455	2005 John Deere Pro Gator #569	-	32,000	-	-	-	32,000	F	1
	3197TC01	2000 John Deere 5310 Tractor #464	-	-	-	34,000	-	34,000	F	1
	3197TC02	2002 John Deere 4400 Tractor #513	-	-	47,000	-	-	47,000	F	1
	3197TC03	2002 John Deere 4400 Tractor #517	-	24,200	-	-	-	24,200	F	1
	3197TC04	2004 John Deere 4410 Tractor #548	-	24,200	-	-	-	24,200	F	1
	3197TO902	Replace 2008 Reel Grinder	-	-	-	33,350	-	33,350	F	1
	3197TR160	1997 1-Ton Dump Truck #419	-	-	-	-	41,200	41,200	F	1
	3199OE1501	Championship Golf Printer Copier Replacement 955 Fairway	-	40,000	-	-	-	40,000	F	1
	Total		373,500	729,500	499,750	552,950	294,700	2,450,400		63
Mountain	3241BD1402	ADA Access to #6 Tee Restroom	-	20,000	95,000	-	-	115,000	D	1
	3241BD1503	Mtn. Golf Course Remodel On Course Bathrooms, #6 & #13/14	70,000	-	-	-	-	70,000	D	1
	3241CO1701	Fuel Management Program	30,000	-	-	-	-	30,000	D	1
	3241GC1101	Mountain Course Greens, Tees, Bunkers and Bridges	27,000	23,000	23,000	-	-	73,000	E	1
	3241GC1404	Irrigation Improvements	-	15,000	-	55,000	-	70,000	E	1
	3241GC1502	Wash Pad Improvements	-	-	-	70,000	-	70,000	D	1
	3242AT716	2007 Buffalo Turbin Debris Blower #601	-	8,400	-	-	-	8,400	F	1
	3242LI1204	Pavement Maintenance of Parking Lot - Mountain Golf Course	10,000	-	22,500	-	-	32,500	E	1
	3242LI1205	Pavement Maintenance of Cart Paths - Mountain Golf Course	55,000	55,000	55,000	65,000	15,000	245,000	E	1
	3242NL400	1999 Carryall Club Car #450	10,000	-	-	-	-	10,000	F	1
	3242NL401	1999 Carryall Club Car #451	10,000	-	-	-	-	10,000	F	1
	3242NL402	1999 Carryall Club Car #452	10,000	-	-	-	-	10,000	F	1
	3242NL403	1999 Carryall Club Car #459	10,000	-	-	-	-	10,000	F	1
	3242NL416	2005 Carryall Club Car #568	10,000	-	-	-	-	10,000	F	1
	3242SV511	2011 Toro 3500D Mower #663	-	50,000	-	-	11,000	61,000	F	1
	3242SV523	2007 Toro Tri-Plex 3250D Mower #598	-	39,100	-	-	-	39,100	F	1
	3242SV525	2008 Toro Sand-Pro #618	20,000	-	-	-	-	20,000	F	1
	3242SV536	2008 Toro Tri-Plex Mower #614	-	40,100	-	-	-	40,100	F	1
	3299BD1403	Mountain Course Clubhouse and Maintenance Building Replacement	-	75,000	175,000	2,100,000	-	2,350,000	B	1
	3299BD1702	Repair Roof - Mountain Golf Club House	12,620	-	-	-	-	12,620	E	1
	3299DI1703	Mountain Golf Course Backflow Device Replacement	-	17,500	-	-	-	17,500	E	1
	Total		264,620	343,100	370,500	2,290,000	26,000	3,294,220		21
Facilities	3350AE1802	Chateau Projector Screens	-	9,000	-	-	-	9,000	G	1
	3350BD1103	Chateau - Replace Carpet	-	-	-	-	47,620	47,620	E	1
	3350BD1302	Resurface Patio Deck - Chateau	27,400	-	-	-	-	27,400	E	1
	3350BD1505	Paint Interior of Chateau	-	20,740	-	-	-	20,740	E	1
	3350BD1702	Upgrade Chateau Community Room Lighting Control Module	22,120	-	-	-	-	22,120	E	1
	3350FF1204	Catering Kitchen Equipment	41,300	-	-	12,600	-	53,900	G	1
	3350FF1801	Chateau Lobby Furniture	-	13,500	-	-	-	13,500	G	1
	3351BD1703	Aspen Grove Facility Improvements	82,550	-	-	-	-	82,550	D	1
	3351BD2101	Dumpster Enclosure - Aspen Grove	-	-	-	-	45,000	45,000	D	1
	3352FF1003	Chateau - Catering Equipment Chairs	13,200	-	-	33,000	-	46,200	G	1
	3352FF1104	Replace Banquet Serveware	60,000	10,000	-	-	-	70,000	G	1
	3352FF1704	Banquet Tables	8,000	31,900	-	-	-	39,900	G	1
	Total		254,570	85,140	-	45,600	92,620	477,930		12
Ski	3453FF1705	Main Lodge Barbeque Enhancement	10,000	-	-	-	-	10,000	D	1
	3453FF1706	Replace Main Lodge / Snowflake Lodge Dining Furniture and Fixtures	24,000	40,000	30,000	-	-	94,000	G	1
	3453FF1707	Replacement of Main and Snowflake Lodge Kitchen Equipment	15,000	-	14,000	113,000	-	142,000	G	1
	3462CE1902	Diamond Peak Fiber Network to Lifts	-	-	68,000	-	-	68,000	D	1
	3462HE1602	School House Lift Major Component Replacement	35,000	-	-	-	-	35,000	E	1
	3462HE1603	Ridge Lift Major Component Replacement	25,000	-	-	-	-	25,000	E	1
	3462HE1702	Lakeview Lift Major Component Replacement	-	95,000	-	-	-	95,000	E	1
	3463AT747	Loader Tire Chains (1-Set)	-	9,300	-	-	9,750	19,050	F	1
	3463NL476	2002 Caterpillar 950G Loader #524	-	-	-	-	-	265,000	F	1
	3463NL492	Replace 2006 Pisten Bully 300 Snowcat #595	-	336,000	-	-	-	336,000	F	1
	3463NL493	Replace 2008 Grooming vehicle # 628	-	-	-	356,000	-	356,000	F	1
	3464AT736	Snowplow #304A	-	-	-	-	19,000	19,000	F	1
	3464BD1302	Vehicle Shop/ Snowmaking Pumphouse Roof	-	36,122	-	-	-	36,122	E	1

22

478

EXHIBIT "C"



Project Summary

Project Number:	3241BD1402	
Title:	ADA Access to #6 Tee Restroom	
Asset Class:		
Division:	41 - Mountain Operations	
Budget Year:	2017	
Scenario Name:		Active: Yes
Budget Status:	Data Entry	
Locations:		
Project Something:	BD - Buildings & Structures	

Project Description

The restroom on the Mountain Golf Course at hole 6 does not meet ADA requirements for access. This project will evaluate the most efficient way to address ADA requirements for access to the restroom at Hole #6.

Project Internal Staff

Will likely require outside engineering, depending on workload. Internal staff will manage the project.

Project Justification

Staff and outside engineer will look at alternatives to meet the ADA requirements; This could include grading a larger parking pad for the golf carts adjacent to the restroom.

Forecast

Budget Year	Total Expense	Total Revenue	Difference
2018			
Design	10,000	0	10,000
Permitting	10,000	0	10,000
Year Total	20,000	0	20,000
2019			
Construction	75,000	0	75,000
Contract Administration	10,000	0	10,000
Design	10,000	0	10,000
Year Total	95,000	0	95,000
	115,000	0	115,000

Year Identified	Start Date	Project Partner	Manager	Est. Completion Date
2012			Principal Engineer	

201

EXHIBIT "D"

2017/2018 - 5 Year Project Summary Totals - FINAL

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	

Division	Project Number	Project Title	2017 - 2018	2018 - 2019	2019 - 2020	2020 - 2021	2021 - 2022	Total	Project Type	Number of Projects	
Mountain Golf	3241BD1402	ADA Access to On-course Restrooms	95,000	-	-	-	-	95,000	D	1	
	3241GC1101	Mountain Course Greens, Tees, Burkers and Bridges	23,000	23,000	10,000	-	-	56,000	E	1	
	3241GC1404	Irrigation Improvements	-	-	75,000	-	-	75,000	E	1	
	3241GC1502	Wash Pad Improvements	-	-	70,000	-	40,000	110,000	E	1	
	3241LI1704	Mountain Golf Course Cart Path Retaining Walls	-	-	-	-	-	70,000	D	1	
	3241LE1720	2007 Buffalo Turbin Debris Blower #601	11,000	17,500	27,500	11,000	10,000	77,000	E	1	
	3241LE1725	2005 Carryall Club Car #568	8,000	-	-	-	-	8,000	F	1	
	3241LE1726	2016 Bar Cart #726	-	-	12,000	-	-	12,000	F	1	
	3241LE1727	2011 Toro 3500D Mower #663	-	-	-	29,000	-	29,000	F	1	
	3241LE1728	2015 Toro 4000D Rough Mower #709	34,000	-	-	-	-	34,000	F	1	
	3241LE1730	2007 Toro Tri-Plex 3250D Mower #598	-	-	-	60,000	-	60,000	F	1	
	3241LE1732	2008 Toro Tri-Plex Mower #514	56,000	-	-	-	-	56,000	F	1	
	3241LI1204	Pavement Maintenance of Parking Lot - Mountain Golf Course	47,500	-	-	-	-	47,500	F	1	
	3241LI1205	Pavement Maintenance of Cart Paths - Mountain Golf Course	6,000	22,500	6,000	6,000	12,500	53,000	E	1	
	3299BD1403	Mountain Course Clubhouse and Maintenance Building Renovation and ADA upgrades	45,000	45,000	40,000	45,000	45,000	220,000	E	1	
	3299BD1702	Replace Roof - Mountain Golf Clubhouse	-	-	-	95,000	600,000	695,000	D	1	
	3299BD1705	Paint Exterior of Mountain Golf Clubhouse	70,000	-	-	-	-	70,000	E	1	
	3299DI1703	Mountain Golf Course Backflow Device Replacement	-	-	30,000	-	-	30,000	E	1	
		Total		17,500	-	-	-	-	17,500	E	1
	Facilities	3350AE1802	Chateau Projector Screens	413,000	108,000	270,500	246,000	707,500	1,745,000		18
3350BD1103		Chateau - Replace Carpet	9,000	-	-	-	-	9,000	G	1	
3350BD1302		Resurface Patio Deck - Chateau	-	-	-	47,620	38,320	85,940	E	1	
3350BD1905		Paint Interior of Chateau	-	-	-	-	31,600	31,600	E	1	
3350BD1906		Paint Exterior of Chateau	27,100	-	-	-	-	27,100	E	1	
3350BD1704		Replace Air Walls Chateau	-	-	-	-	32,500	32,500	E	1	
3350BD1705		Magnetic Fire Door Closures	-	7,860	94,500	-	-	102,360	E	1	
3350FF1204		Catering Kitchen Equipment	18,450	-	-	-	-	18,450	E	1	
3350FF1801		Chateau Lobby Furniture	13,500	-	18,900	-	-	32,400	G	1	
3351BD1703		Aspen Grove Improvements	-	-	-	-	-	13,500	G	1	
3351BD2101		Dumproster enclosure - Village Green/Aspen Grove	-	-	-	10,000	41,400	51,400	E	1	
3351FF1003		Chateau - Catering Equipment Chairs	-	-	-	-	45,000	45,000	D	1	
3351FF1104		Replace Banquet Serviceware	-	-	33,000	-	-	33,000	G	1	
3351FF1704		Banquet Tables	10,000	-	-	-	-	10,000	G	1	
		Total	31,900	-	-	-	-	31,900	G	1	
		Total	109,950	7,860	146,400	57,620	188,620	510,650		14	

EXHIBIT "E"

2018/2019 - 5 Year Project Summary Totals - FINAL 05/23/18

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	

Division	Project Number	Project Title	2018 - 2019	2019 - 2020	2020 - 2021	2021 - 2022	2022 - 2023	Total	Project Type	Number of Projects
	3142LE1754	2011 Toro Greensmaster 1000 #653	14,500	-	-	-	-	14,500	F	1
	3142LE1755	2011 Toro Greensmaster 1000 #654	14,500	-	-	-	-	14,500	F	1
	3142LE1756	2011 Toro Greensmaster 1000 #655	14,500	-	-	-	-	14,500	F	1
	3142LE1757	2011 Toro Greensmaster 1000 #656	14,500	-	-	-	-	14,500	F	1
	3142LE1758	2011 Toro Greensmaster 1000 #657	14,500	-	-	-	-	14,500	F	1
	3142LE1759	2014 3500D Toro Rotary Mower #693	-	-	-	38,000	-	38,000	F	1
	3142LE1760	2010 John Deere 8500 #641	-	87,200	-	-	-	87,200	F	1
	3142LE1861	Toro Greensmaster 1600	10,000	-	-	-	-	10,000	E	1
	3143GC1202	Driving Range Improvements	-	31,000	-	-	-	31,000	E	1
	3144FF1702	Replace Icemaker Championship Golf Course Cart Barn	-	-	-	10,980	-	10,980	G	1
	3153BD2001	Recoat Chateau F&B Grill and Catering Kitchen Floors	-	-	-	37,200	-	37,200	E	1
	3153FF1204	Champ Grille Kitchen Equipment	-	46,200	-	-	-	46,200	G	1
	3197HV1749	1997 1-Ton Dump Truck #419	-	42,000	-	-	-	42,000	F	1
	3197LE1720	1989 Lely Fertilizer Spreader #365	7,000	-	-	-	-	7,000	F	1
	3197LE1724	2000 Toro Spreader #462	-	12,500	-	-	-	12,500	F	1
	3197LE1726	2001 Spiker/Seeder #477	-	10,200	-	-	-	10,200	F	1
	3197LE1728	2013 Toro Top Dresser #686	-	-	-	13,000	-	13,000	F	1
	3197LE1731	2008 Planetair HD50 #616	-	-	35,000	-	-	35,000	F	1
	3197LE1732	2015 John Deere 1500 Fairway Aerator #716	-	27,000	-	-	-	27,000	F	1
	3197LE1733	2008 JD TC125 Core Harvester #621	-	-	-	12,400	-	12,400	F	1
	3197LE1734	2008 Bandit Brush Chipper #625	-	40,000	-	-	-	40,000	F	1
	3197LE1735	2017 TORO PROCORE 864 AERATOR #747	-	-	-	-	15,400	15,400	F	1
	3197LE1738	2004 John Deere Pro Gator #546	34,000	-	-	-	-	34,000	F	1
	3197LE1740	2005 John Deere Pro Gator #569	-	34,500	-	-	-	34,500	F	1
	3197LE1741	2015 Greens Roller #715	-	15,000	-	-	-	15,000	F	1
	3197LE1742	2014 Vibratory Greens Roller #696	-	17,000	-	-	-	17,000	F	1
	3197LE1743	2000 John Deere 5310 Tractor #464	47,000	-	-	-	-	47,000	F	1
	3197LE1746	2004 John Deere 4410 Tractor #548	-	33,350	-	-	-	33,350	F	1
	3197LE1748	Replace Blade Grinding Equipment	25,000	-	41,200	-	-	66,200	G	1
	3197LE1753	2011 Toro Tri-Plex 3250D Mower #664	40,500	-	-	-	-	40,500	F	1
	3197ME1710	Maintenance Shop Crane and Equipment Lift	-	30,000	-	-	-	30,000	G	1
	3199OE1501	Championship Golf Printer Copier Replacement 955 Fairway	-	10,000	-	-	-	10,000	G	1
	Total		492,400	685,450	1,115,700	297,880	440,400	3,031,830		59
Mountain Golf	3241GC1101	Mountain Course Greens, Tees and Bunkers	23,000	42,000	12,000	-	-	77,000	E	1
	3241GC1404	Irrigation Improvements	-	46,000	-	-	30,000	76,000	E	1
	3241GC1502	Wash Pad Improvements	-	-	-	70,000	-	70,000	D	1
	3241GC1802	Mountain Course Clubhouse and Maintenance Building Water Service Line Replacement	-	65,000	-	-	-	65,000	D	1
	3241LI1704	Mountain Golf Course Cart Path Retaining Walls	12,500	17,500	37,500	12,500	12,500	92,500	E	1
	3241ME1804	Mountain Golf Fuel Storage Facility	-	50,000	-	-	-	50,000	D	1
	3242LE1725	2005 Carryall Club Car #568	-	12,000	-	-	-	12,000	F	1
	3242LE1726	2016 Bar Cart #726	-	-	29,000	-	-	29,000	F	1
	3242LE1728	2015 Toro 4000D Rough Mower #709	-	-	-	-	61,000	61,000	F	1
	3242LE1732	2016 Toro Tri-Plex Mower #614	-	-	-	-	43,400	43,400	F	1
	3242LI1204	Pavement Maintenance of Parking Lot - Mountain Golf Course	6,000	22,500	6,000	12,500	-	59,500	E	1
	3242LI1205	Pavement Maintenance of Cart Paths - Mountain Golf Course	45,000	40,000	45,000	45,000	45,000	220,000	E	1
	3299BD1403	Mountain Course Clubhouse and Maintenance Building Renovation and ADA Upgrades	-	-	-	-	95,000	95,000	D	1
	3299BD1705	Paint Exterior of Mountain Golf Clubhouse	27,800	-	-	-	-	27,800	E	1
	3299BD1801	Replace Carpet in Mountain Golf Clubhouse	24,000	-	-	-	-	24,000	E	1
	3299BD1803	Mountain Golf Roll Up Shop Doors	12,000	-	-	-	-	12,000	E	1
	Total		150,300	295,000	129,500	140,000	299,400	1,014,200		16
Facilities	3350BD1103	Chateau - Replace Carpet	-	62,000	-	-	49,500	111,500	E	1
	3350BD1302	Resurface Patio Deck - Chateau	-	-	36,000	-	-	36,000	E	1
	3350BD1506	Paint Exterior of Chateau	-	-	-	47,000	-	47,000	E	1
	3350BD1704	Replace Air Walls Chateau	7,500	89,360	-	-	-	96,860	E	1
	3350BD1803	Replace Carpet in Chateau Grill	12,000	-	-	-	-	12,000	E	1
	3350BD1804	Replace Hallway Tile at Chateau	-	-	-	-	-	65,000	E	1
	3350BD1805	Repair and Refinish Wood Walls Upstairs at Chateau	-	65,000	-	-	-	65,000	E	1
	3350BD1806	Paint Both Food & Beverage Kitchens and Storage Areas	12,000	-	-	-	-	10,000	E	1
								12,000	E	1

EXHIBIT "F"



Project Summary

Project Number:	3241BD1402		
Title:	ADA Access to On-course Restrooms		
Asset Class:			
Division:	41 - Mountain Operations		
Budget Year:	2018		
Scenario Name:	Main	Active:	Yes
Budget Status:	Data Entry		
Locations:			
Project Something:	BD - Buildings & Structures		

Project Description

The restrooms on the Mountain Golf Course do not meet ADA requirements for access. This project will regrade and pave a golf cart parking location and accessible route to each restroom. This work will be completed in conjunction with the remodel of the interior and exterior of the on-course restrooms (2016/2017 CIP Budget Project # 3241BD1503) as ADA compliance is necessary to procure the Washoe County Building Department permits to allow the remodel work.

Project Internal Staff

This project will be designed by an outside Civil Engineering with management by the District's Engineering Division.

Project Justification

On-course restrooms must be ADA compliant with an accessible route from the location where a golf cart would be parked nearby.

Forecast

Budget Year	Total Expense	Total Revenue	Difference
2018			
Construction	85,000	0	85,000
Contingency	10,000	0	10,000
Year Total	95,000	0	95,000
	95,000	0	95,000

Year Identified	Start Date	Project Partner	Manager	Est. Completion Date
2012			Principal Engineer	

EXHIBIT "G"



Project Summary

Project Number:	3241BD1503		
Title:	Mtn. Golf Course Remodel On Course Bathrooms, #6 & #13/14		
Asset Class:			
Division:	41 - Mountain Operations		
Budget Year:	2017		
Scenario Name:			Active: Yes
Budget Status:	Data Entry		
Locations:			
Project Something:	BD - Buildings & Structures		

Project Description

The restrooms at the Mountain Golf Course are in need of a remodel to meet the care and condition of current standards. The interior of the both the Hole #6 and Hole #13/#14 restrooms are showing the wear and tear of the many years of use and do not match the value of the golf course. All interior fixtures and finishes need to be replaced. The floors will be recoated and sealed. New exterior siding will be evaluated to be installed rather than paint, because of the existing condition of the siding and the durability and low maintenance of a replacement product.

Project Internal Staff

Staff will supervise and inspect project.

Project Justification

The general purpose of this project is to improve our facilities through required maintenance and remodel improvements that directly or indirectly reflect on our guest experience. This project is designed primarily to maintain the value of the Mountain Golf Course asset and customer service. Both restrooms currently have power supplied to them. Currently there is no heat in either restroom. This project will provide heat to make the restrooms more comfortable during the shoulder seasons and early mornings of prime season. Both restrooms receive regular customer complaints.

Forecast

Budget Year	Total Expense	Total Revenue	Difference
2017			
Construction	70,000	0	70,000
Year Total	70,000	0	70,000
	70,000	0	70,000

Year Identified	Start Date	Project Partner	Manager	Est. Completion Date
2012	Apr 18, 2016		Principal Engineer	May 13, 2016

★

202

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
 Carry Over Schedule - Capital Improvement Projects for 2018-2019 Budget

FUND	DESCRIPTION	PROJECT #	2017-18	Estimated	2018-19	
			TOTAL BUDGET	Expended 5/11/18	Budget Carry Over	
Mountain Golf	ADA Access to On-course Restrooms	3241BD1402	\$ 95,000	\$ -	95,000	
	Min. Golf Course Remodel On Course Bathrooms, #6 & #13/14	3241BD1503	79,250	7,855	71,395	
	Fuel Management Program	3241CO1701	30,000	30,000	-	
	Mountain Course Greens, Tees, Bunkers and Bridges	3241GC1101	38,000	29,287	-	
	Irrigation Improvements	3241GC1404	5,000	-	-	
	Pavement Maintenance of Parking Lot - Mountain Golf Course	3242LI1204	16,000	16,000	-	
	Pavement Maintenance of Cart Paths - Mountain Golf Course	3242LI1205	77,800	79,668	-	
	Mountain Golf Course Cart Path Retaining Walls	3241LI1704	11,000	3,832	7,168	
	Repair Roof - Mountain Golf Club House	3299BD1702	82,400	-	82,400	
	Mountain Golf Course Backflow Device Replacement	3299DI1703	17,500	17,500	-	
	Fuel System Refurbishment - Unbudgeted	3299BD1801	-	21,892	-	
	Gas Golf Cart Fleet - (Budgeted for new lease, purchased existing fleet)	3244LV1810	-	48,731	-	
	2007 Buffalo Turbin Debris Blower #601	3242LE1720	8,000	7,224	-	
	2011 Toro 3500D Mower #663	3242LE1727	34,000	32,350	-	
	2007 Toro Tri-Plex 3250D Mower #598	3242LE1730	56,000	57,280	-	
	2008 Toro Tri-Plex Mower #614	3242LE1732	47,500	45,829	-	
		Total	\$ 597,450	\$ 397,448	\$ 255,963	
	Facilities	Chateau Projector Screens	3350AE1802	\$ 9,000	\$ 8,956	\$ -
		Paint Interior of Chateau	3350BD1505	27,100	26,115	-
Magnetic Fire Door Closures		3350BD1705	18,450	16,612	-	
Catering Kitchen Equipment		3350FF1204	15,000	12,854	-	
Enclose Chateau Exterior Storage Area		3350FF1601	6,500	-	6,500	
Chateau Lobby Furniture		3350FF1801	13,500	8,873	-	
Aspen Grove - Replace Siding		3351BD1502	22,500	22,500	-	
Aspen Grove Facility Improvements		3351BD1703	60,000	60,000	-	
Replace Banquet Serveware		3352FF1104	55,000	10,000	-	
Banquet Tables		3352FF1704	31,900	2,913	-	
	Total	\$ 258,950	\$ 168,823	\$ 6,500		

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
 Carry Over Schedule - Capital Improvement Projects for 2018-2019 Budget

FUND	DESCRIPTION	PROJECT #	2017-18	Estimated	2018-19
			TOTAL BUDGET	Expended 5/11/18	Budget Carry Over
Ski	Replace Main Lodge / Snowflake Lodge Dining Furniture and Fixtures	3453FF1706	\$ 68,000	\$ 68,000	\$ -
	Lakeview Ski Lift Maintenance and Improvements	3462HE1702	115,000	-	-
	Redfox & Ridge Lift Restraining Bar Upgrade	3462LE1608	23,500	29,458	-
	Loader Tire Chains (1-Set)	3463HE1722	10,000	8,975	-
	Replace 2006 Pisten Bully 300 Snowcat #595	3463HE1726	390,000	389,500	-
	Vehicle Shop/Snowmaking Pumphouse Roof	3464BD1302	158,122	47,175	20,000
	Fuel Management Program	3464CO1701	75,000	33,115	41,885
	Ski Resort Snowmobile Fleet Replacement	3464LE1601	12,500	13,901	-
	Fan Guns Purchase and Refurbishment	3464SI1002	100,000	72,250	27,750
	Snowmaking Infrastructure Evaluation and Enhancement	3464SI1104	50,000	18,500	31,500
	Upgrade Popular Snowmaking Power Alignment	3464SI1708	37,500	420	37,080
	Snow Gun Mounting Pedestals	3464SI1713	9,000	3,000	-
	Pavement Maintenance, Diamond Peak and Ski Way	3469LI1105	94,500	94,500	-
	Diamond Peak Way Finding Signage Evaluation and Enhancement	3469RS1709	40,000	-	40,000
	Skier Services Building Customer Service Counter	3499FF1607	19,700	-	19,700
	Incline Creek Culvert Rehabilitation at Diamond Peak	3499LI1101	1,520,300	915,000	604,600
	Ski Area Master Plan Implementation - Phase 1a and 1b (Entitlements)	3653BD1501	690,000	7,422	682,600
	Replace Ski Rental Equipment	3468RE0002	-	(595)	-
	Replace Staff Uniforms	3499OE1205	-	(244)	-
Lift Rescue Glider - unbudgeted	3464FF1703	-	8,442	-	
	Total	\$ 3,413,122	\$ 1,708,819	\$ 1,505,115	
Recreation	Replace Walkway Bollard Lights	4884BD1703	\$ 56,500	\$ -	\$ 56,500
	Recreation Center Natatorium Mezzanine Safety Enhancements	4884BD1601	40,000	-	-
	Replace Condensing Unit 2 and 4	4884BD1901	39,430	-	39,430
	Resurface Recreation Center Patio Deck	4884FF1501	36,600	-	36,600
	Repair Deck Stairs and Powder Coat All Patio Deck Railings	4884FF1502	48,500	-	48,500
	Pavement Maintenance, Recreation Center Area	4884LI1102	17,500	16,000	-
	Fitness Equipment	4886LE0001	42,600	29,884	-
2012 Chevy Compact SUV #665	4899LV1723	26,000	25,215	-	
	Total	\$ 307,130	\$ 71,099	\$ 181,030	

OPINION

AARON D. FORD
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

January 18, 2019

Via Electronic Mail

Aaron Katz
S4s@ix.netcom.com

**Re: Open Meeting Law Complaint - Incline Village General
Improvement District, OAG File No. 13897-305**

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID or District) regarding the alleged failure to take action in an open meeting.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4) and subject to the OML. The Complaint alleges the Chairwoman of the IVGID Board of Trustees (Board) improperly committed the Board to expending public funds outside of an open meeting through a letter of support dated July 6, 2018 (Letter of Support), on behalf of the Tahoe Transportation District (TTD) to the United States Department of Transportation (US DOT). The Complaint further alleges the Board improperly discussed the Letter of Support at the Board meeting on July 24, 2018.

In January 2013, the Board authorized entering into an Interlocal Agreement with TTD for the purposes of evaluating the feasibility of the co-location of the District's Export Pipeline. In October 2014, following the evaluation and determination that the co-location is viable, the Interlocal Agreement was amended to allow for the completion of the primary design and an environmental analysis for the co-location. The amendment further contemplated that there may be a future agreement between IVGID and TTD to pursue final design, permitting, and construction of the project. Additionally, IVGID has collected and earmarked \$7.5

million dollars for the co-location project, but the Board has yet to take action to commit or contribute these funds to the project.

On July 6, 2018, Board Chair, Kendra Wong, signed the Letter of Support issued to USDOT in support of a grant application submitted by TTD. Specifically, the Letter of Support stated: “IVGID has \$7.5 million dollars available as a match for this BUILD grant to allow co-location and construction of the replacement 3.75-mile pipeline segment.”

The Board’s agenda for its July 24, 2018, meeting included the following item:

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*

The supporting material included for agenda item “J” was the July 6, 2018 Letter of Support signed by Chairwoman Wong.

Upon calling agenda item “J,” Chairwoman Wong informed the Board of the letter and specified that the letter could be located in the meeting packet on page 766. Chairwoman Wong indicated that she signed the Letter of Support and included a copy because she did not want to forget to inform the other Board members of the signed letter.

DISCUSSION AND LEGAL ANALYSIS

The OML, as comprised by Chapter 241 of the NRS, applies to meetings of public bodies, and it requires that the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1); *see McKay v. Bd. Of Supervisors*, 102 Nev. 644, 651 (1986). Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

The July 6, 2018 Letter of Support

“Action” is defined as a decision, commitment, promise, or vote “made by a majority of the members present . . . during a meeting of a public body.” NRS 241.015(1). Chairwoman Wong’s execution of the Letter of Support is consistent with the intent of the Board’s prior actions related to the Interlocal Agreement, and subsequent amendment to the agreement, with TTD. The letter provides support of TTD’s efforts in obtaining grant funding for the co-location project. Although the Letter of Support indicates that the Board has funds available as a match for the co-location project, it did not legally obligate or commit the Board to payment of any

Aaron Katz
Page 3
January 18, 2019

money and was not an Action of the Board. Thus, Chairwoman Wong's execution of the Letter of Support without full Board approval did not constitute an OML violation.

The July 24, 2018 Agenda

The Board agendaized the Letter of Support without allowing for Board discussion of the item. However, Chairwoman Wong's update regarding the Letter of Support spawned comments from the Board despite the notification that "no discussion" will take place for agenda item "J." A discussion related to the Letter of Support was avoided when Board counsel, Jason Guinasso, reminded the Board that the agenda item as written does not allow for discussion. However, absent control of Mr. Guinasso, an OML violation would likely have occurred.

Accordingly, the OAG cautions the Board to ensure compliance with its own agendaized restrictions for future agenda items.


CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By:


TIFFANY E. BREINIG
Deputy Attorney General
(702) 486-3125
tbreinig@ag.nv.gov

TEB:arz

cc: Jason D. Guinasso, Counsel to IVGID
Kendra Wong, Chair, IVGID Board of Trustees

RESPONSE



500 DAMONTE RANCH PARKWAY, SUITE 980
RENO, NV 89521
775.853.8746
FAX 775.201.9611
HUTCHLEGAL.COM

JASON D. GUINASSO
PARTNER
JGUINASSO@HUTCHLEGAL.COM

October 12, 2018

*Via Electronic Mail- CBateman@ag.nv.gov
& Hand Delivery to:*

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
Boards and Open Government Division
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

Re: RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES - OPEN MEETING LAW COMPLAINT, KATZ, AARON O.A.G. FILE NO. 13897-305

Dear Ms. Bateman:

We received your September 27, 2018 correspondence notifying the Incline Village General Improvement District (herein referenced as “IVGID” or “District”) of the above referenced complaint by Aaron Katz alleging that IVGID has violated the Nevada Open Meeting Law (“OML”). Please accept this correspondence and the referenced enclosures as IVGID’s response.

I. Issues Presented

Whether IVGID Board of Trustees Chairwoman Kendra Wong and District Staff violated Nevada Open Meeting Law by issuing the SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support (“Letter of Support”), dated July 6, 2018, pursuant to IVGID Board Policy No. 3.1.0.6(f).

See Exhibit A (IVGID SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support).

II. Short Answer

No, IVGID Board Chairwoman Wong and District Staff did not violate Nevada OML. IVGID’s denial of the allegations presented by Aaron Katz are based on the fact that: (1) The Board of Trustees had already authorized entering into an Interlocal Agreement with the Tahoe Transportation District in January of 2013 and the Letter of Support was consistent with that Board action; (2) the decision to issue the Letter of Support was delegable to the IVGID Board of Trustees to General Manager Steve Pinkerton and/or designee; and, (3) the issuance of the Letter of Support does not commit or contract the District to incur any expense.

III. IVGID’s Response

On January 9, 2013, the IVGID Board of Trustees authorized staff to enter into an Interlocal Agreement with the Tahoe Transportation District (TTD). The Agreement allowed for the formal evaluation of the feasibility of co-locating the District’s Export Pipeline within the alignment of the proposed bikeway running along the lake

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
October 12, 2018

side of SR-28 between Sand Harbor State Park and the Junction of SR-28 and US-50. **See Exhibit B (Minutes of January 9, 2013, IVGID Board meeting and December 31, 2012 Memorandum).**

Thereafter, on October 30, 2014, the Interlocal Agreement was amended to allow IVGID to provide up to \$300,000.00 in District funds to allow for the completion of the primary design and environmental analysis for the co-location of IVGID's Export Pipeline with the SR-28 Bikeway. **See Exhibit C (Minutes of November 19, 2014, IVGID Board meeting and October 30, 2014 Memorandum).** The Amendment also set forth the duties of each agency. In this regard, TTD was required to hold all contracts and be responsible for managing the design and environmental process, while IVGID provided the technical review and project management support. Further, it was acknowledged by the Board and the Staff that, should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, IVGID would realize a cost saving of up to \$7,000,000.00 of an estimated \$23,000,000.00 project, as well as long term operational and maintenance benefits by co-locating the pipeline within the bikeway.

Consistent with the foregoing Board actions, on July 26, 2018, Board Chair Kendra Wong signed a letter of support for the TTD BUILD grant application for the next phase of the State Route 28 Shared Use Pathway. The Support Letter specifically provided:

As one of 13 project partners, IVGID is providing \$300,000 in funding, via a January 2013, Interlocal Agreement with TTD (amended October 2014), for the current Environmental Analysis which is on track to be completed this year... IVGID has \$7.5 million dollars available as a match for this BUILD grant to allow co-location and construction of the replacement 3.75-mile pipeline segment.

The Support Letter did not commit public funds or make any other commitment that had not been previously approved by the Board of Trustees. The Support Letter was merely a reaffirmation of IVGID's collaborative relationship with TTD and IVGID support of TTD's efforts to secure grant funding. Preparing this Support Letter was clearly within the General Manager's authority. Chairwoman Wong's signature on the letter was consistent with what the IVGID Board had previously approved and was in furtherance of the Interlocutory Agreement between IVGID and TTD.

In his OML Complaint, Mr. Katz cites The Comm'n on Ethics of the State of Nevada v. Hansen, 134 Nev. Adv. Op. 40 (2018), alleging that Chairwoman Wong and General Manager Pinkerton had violated the Nevada Open Meeting Law by not obtaining approval from the Board before preparing and signing the Letter of Support. Hansen does not apply because (1) there was not an expenditure of public funds or a commitment to spend public money, (2) the actions taken were consistent with prior Board action and (3) the actions of the General Manager are within the authority delegated to him.

The Nevada Open Meeting Law does not apply to decisions and actions of the General Manager of a "public body." While the IVGID Board of Trustees, which was formed in accordance within the provisions of NRS Chapter 318, is a "public body" under NRS 241.015(4), the General Manager acting within the powers delegated to him by the Board of Trustees is not a "public body" subject to the provisions of the OML. Additionally, the "actions" of the General Manager are not subject to the Nevada OML. In this regard, "action" under the OML is defined to mean, "decision," "commitment or promise made," or "an affirmative vote" taken, by "a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body." NRS 241.015(1)(a),(b),(c). The actions taken by the General Manager to prepare a

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
October 12, 2018

Letter of Support for previously approved collaboration with TTD, are within the authority delegated to him and do not constitute an unauthorized expenditure of public funds.

In this regard, the Court in Hansen specifically stated:

The dissent's analysis presupposes that the authority to file a notice of appeal is (1) delegable and (2) was delegated in this case. The dissent also cites *City of San Antonio v. Aguilar*, 670 S.W.2d 681 (Tex. App. 1984), rejecting a Texas Open Meeting Act appeal filed by a city attorney based on the city attorney's separate authority under the city's ordinances.

Here, whether the authority to file a notice of appeal is delegable is not germane to our analysis because the record does not show and nothing in the statutes or regulations concerning the Ethics Commission provides for a grant or delegation of decision-making authority to the Commission's chair, director, or legal counsel to file a notice of appeal without action by the Commission as a whole.

The Court acknowledges "delegated authority" and the ability of public bodies to grant or delegate decision-making authority to directors or their designee. Whereas, in Hansen, there was no previous statute or regulation germane to the delegable authority; in this instance, the issuance of the Letter of Support is within both the scope of previous Board direction regarding TTD and within the authority specifically delegated to the General Manager, as codified in IVGID Board Policy 3.1.0.6(f).

f. Contracts.

Contracts entered into by the District that are required to be advertised under Nevada Revised Statutes 332 and/or 338 must be approved by the Board of Trustees. All documents approved or awarded by the Board shall be signed in the name of the District by the Chair and countersigned by the Secretary, unless authorization to sign is given to another person(s) by the Board.

Contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees.

Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and executed by the General Manager or his designee of the District, if it is for an amount less than the advertising threshold of Nevada Revised Statute 332. Contracts over the threshold of NRS 332.115 must be approved by the Board of Trustees.

The Letter of Support affirmed the District's contribution of \$300,000 for the shared cost of the Environmental Impact Statement approved via the January 2013 Interlocal Agreement; however, contrary to Mr. Katz's interpretation, the Letter in no way commits the District to any additional expenses. While the Letter does reference the District's \$7.5 million Utility Fund balance earmarked for Phase II Effluent Pipeline Repairs/Replacement as "available as a match for this BUILD grant", this element of the letter does not constitute a promise, contractual obligation, nor commitment. The intent of the letter is stated explicitly in a statement by Chairwoman Wong at the July 24, 2018 IVGID Board of Trustees Meeting:

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
October 12, 2018

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.

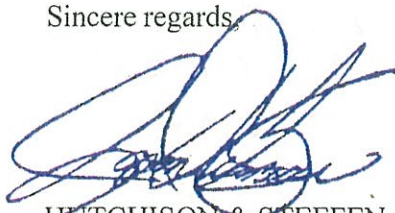
IVGID Did Not Violate the Open Meeting Law

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

EXHIBIT A

EXHIBIT A



July 6, 2018

The Honorable Elaine Chao
United States Department of Transportation
1200 New Jersey Avenue SE
Washington DC, 20590

RE: SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support

Dear Ms. Chao,

The Incline Village General Improvement District (IVGID) appreciates and supports the Tahoe Transportation District's (TTD) BUILD grant application for the next phase of the State Route 28 Shared Use Pathway. We are a rural area that relies upon this critical infrastructure and we are consistently challenged with safety issues and congestion along the State Route 28 corridor of the Lake Tahoe Basin. This is a narrow two-lane highway with steep topography and traffic at peak season can be delayed for hours impeding commuters, visitors, and emergency response vehicles. Working together, the project partners set the goal of this multi-phased project to clear congestion, provide safe multi-modal access to Lake Tahoe's east shore, provide road safety improvements, underground and replace 40-80+ year old utility infrastructure, and to control erosion along the highway shoulder in order to protect the highway and Lake Tahoe's water quality.

Within this corridor, IVGID operates and maintains approximately 11.5 miles of underground pipeline that carries treated wastewater effluent out of the Tahoe Basin. This pipeline, originally constructed in 1970, is approaching the end of its service life. IVGID has replaced 5.5-miles of the pipeline to date and condition assessment activities have identified an additional 3.75-miles that must be replaced in the near future. Additional condition assessment of the final 2.25-miles is scheduled for the fall of 2018.

It is IVGID's desire to relocate the replacement sections of pipeline to within the Shared Use Pathway as much as physically possible within the project area. As one of 13 project partners, IVGID is providing \$300,000 in funding, via a January 2013 Interlocal Agreement with TTD (amended October 2014), for the current Environmental Analysis which is on track to be completed this year.

The entire length of the 3.75-miles of pipeline identified for near term replacement is located within the alignment of the proposed next phase of the SR-28 Shared Use Pathway. IVGID believes there is a tremendous opportunity to relocate the pipeline out of the narrow highway footprint and into the pathway alignment. Doing so eliminates future traffic congestion during normal pipeline maintenance, substantially reduces pipeline construction costs, and halves the duration of traffic impacting construction. Additionally, co-location would allow the installation of fire hydrants on the replacement pipeline to support the firefighting activities in the event of a wildland fire along the eastern shore of Lake Tahoe. IVGID has \$7.5 million dollars available as a match for this BUILD grant to allow co-location and construction of the replacement 3.75-mile pipeline segment.

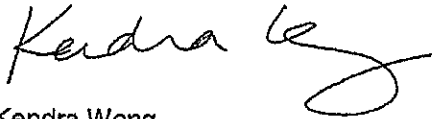
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
893 SOUTHWOOD BOULEVARD · INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 · FAX: (775) 832-1122 · WWW.YOURTAHOEPLACE.COM

766

500

As you are aware, our small rural communities need assistance in replacing aging infrastructure. But just as important, this National Scenic Byway deserves our attention in providing the over 2.6 million motorists in this stretch a safe driving experience, the over one million visitors safe multi modal access to their public lands, and to protect the water clarity of this national treasure, Lake Tahoe.

Sincerely,



Kendra Wong
Chairwoman
Board of Trustees
Incline Village General Improvement District

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
893 SOUTHWOOD BOULEVARD · INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 · FAX: (775) 832-1122 · WWW.YOURTAHOEPLACE.COM

EXHIBIT B

EXHIBIT B

New York Post Times article which stated that Mr. Trump is buying up a lot of golf courses.

Aaron Katz congratulated the new Trustees and said that he has two issues to talk about – when a member of the community wants something on the agenda, they can't get by the General Manager and that when he submitted an item, he received no response which is absolutely wrong. Mr. Katz continued that he made another request on November 26 and that he hasn't heard anything about that and that he expects he won't hear anything which is wrong. When any member of the community wants to come before the Board, it isn't fair to pick and choose who can or can't and that he has a written statement with a request. The second item is that there is unethical conduct going on by IVGID employees and it is going on right under the Board's noses. It is unethical for a public employee to solicit expense allowance and/or accept it from a private source in addition to their public salary. This is a good provision and it is the law in Washoe County. He has a friend who was confronted not only with a tip jar but on their food receipt, there is a tip line. This is unethical conduct and yet the General Manager has made the representation that he can establish the policies so the fault lies with the General Manager and that a recent decision, by the Attorney General, says that we can't go after them – it is wrong.

K. CONSENT CALENDAR (for possible action)

- K.1. Interlocal Agreement with the Nevada Division of State Lands for Sale and Transfer of Coverage Owned by Incline Village General Improvement District (Requesting Member of Staff: Director of Public Works Joe Pomroy)**
- K.2. Interlocal Agreement with the Tahoe Transportation District for Initial Scoping for the Co-location of the IVGID Export Pipeline with the SR-28 Bikeway (Requesting Member of Staff: Director of Public Works Joe Pomroy)**

Trustee Wolfe made a motion to approve the Consent Calendar items as submitted; Trustee Hammerel seconded the motion. Chairman Simonian called the question and the motion was unanimously passed.

L. GENERAL BUSINESS (for possible action)

- L.1. Resolution 1814: A Resolution in Support of the Consolidated Tax Bill Draft Generated by the Interim Subcommittee to Study**

MEMORANDUM

TO: Board of Trustees

THROUGH: William B. Horn
General Manager

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

SUBJECT: Interlocal Agreement with the Tahoe Transportation District for Initial Scoping for the Co-location of the IVGID Export Pipeline with the SR-28 Bikeway

DATE: December 31, 2012

I. STAFF RECOMMENDATION AND PROPOSED MOTION

That the Board of Trustees makes a motion to:

1. Enter into an Interlocal Agreement between the Tahoe Transportation District and the Incline Village General Improvement District to complete the initial scoping for the co-location of IVGID's Export Pipeline and the SR-28 Bikeway.
2. Authorize Chair and Secretary to execute the Interlocal Agreement based on a review by General Counsel and Staff.

II. BACKGROUND

The District's effluent export pipeline transports treated wastewater from the District's wastewater treatment plant to the disposal point at the District's wetlands facility southeast of Carson City. This pipeline was constructed in the early 1970's as part of a regional effort to eliminate all wastewater effluent discharges in the Lake Tahoe Basin. The effluent export pipeline has been in continuous service since that time and is comprised of five segments totaling approximately 20-

Interlocal Agreement with the -2-
Tahoe Transportation District
for Initial Scoping for the Co-location
of the IVGID Export Pipeline with
the SR-28 Bikeway

December 31, 2012

miles in length. Three segments (Segments 1-3), totaling approximately 12-miles, are located within the Lake Tahoe Basin.

As part of the original Effluent Export Project, the District replaced approximately 6-miles of 16-inch diameter effluent export pipeline in the Lake Tahoe Basin. This was accomplished in multiple phases (starting in 2006 and finishing in 2009) and included approximately 18,000-linear feet of Segment 1 (Incline Village to Sand Harbor) and 11,000-linear feet of Segment 3 (around Spooner Meadow). During planning and design of the first phase approximately 13,700-linear feet of Segment 3 and all 17,300-linear feet of Segment 2 were identified to be in good condition and were not identified for replacement. These pipeline segments are in the southbound shoulder of State Route 28 between Sand Harbor and Spooner Meadow.

In August of 2009, a pipe break within the un-replaced portion of Segment 3 washed out State Route 28. An investigation conducted by District staff and a District hired corrosion consulting engineer revealed areas of advanced corrosion on the damaged pipeline section indicating the un-replaced portions of the export line may be nearing the end of their service life and replacement of the remaining pipeline should be planned and budgeted.

At the January 5, 2011 meeting, the Board of Trustees authorized a preliminary engineering services contract with HDR Engineering to begin Phase II of the Effluent Export Project. The project was initially scoped to replace the two remaining sections within the Lake Tahoe Basin (a total length of approximately 6-miles). Segment 2 is comprised of approximately 17,300-linear feet of welded, cement mortar lined, high pressure steel pipe. The remaining 13,700-linear feet of Segment 3 is comprised of bell and spigot, cement mortar lined, low pressure steel pipe.

At the October 10, 2012 meeting, the Board of Trustees authorized an engineering services contract to evaluate and provide recommendations on pipeline condition assessment technologies for

Interlocal Agreement with the -3-
Tahoe Transportation District
for Initial Scoping for the Co-location
of the IVGID Export Pipeline with
the SR-28 Bikeway

December 31, 2012

Segment 2, 17,300 linear feet of welded steel export pipeline, based on recently gathered data. As part of the construction of the Spooner Pumping Station Improvements Project this summer, a section of the high pressure welded steel pipe in Segment 2 was removed. The condition of this pipe section was better than anticipated and, if the section examined is representative of the condition of the rest of Segment 2, it could mean replacement of Segment 2 is not necessary in the near future. The contract also included additional engineering tasks for pipeline alignment, crossing of NDOT culverts and additional work zone analyses.

District staff for the last several years has been part of the Tahoe Transportation District (TTD) Project team that is analyzing the SR-28 corridor for improving transportation, parking, bikeways and access to the east shore of Lake Tahoe. A key part of this involvement has been direct discussions between TTD and District staff about the possibility of co-locating the effluent export pipeline with a new Bikeway on the east shore.

The Tahoe Transportation District was created by Congress in 1980 when the bi-State compact was amended. The agency is responsible for facilitating and implementing safe, environmentally positive, multi-modal transportation plans, programs and projects for the Lake Tahoe Basin, including transit operations. Specific tax revenue to support transit and transportation facilities can be allotted to the District. TTD may also acquire, own and operate public transportation systems and parking facilities serving the Tahoe region and provide access to convenient transportation terminals outside of the region.

The purpose of the Nevada Stateline-to-Stateline Bikeway is to provide non-auto transportation opportunities that link recreation areas, community centers, transportation facilities, and neighborhoods in the bikeway corridor to expand recreational access and transportation choices for residents and visitors to the Tahoe Basin. Separated bicycle facilities are not available along most of the Nevada side of Lake Tahoe. The bikeway would provide a spectacular recreation

opportunity to link public beaches and coves along the picturesque east shore.

The alignment of the Bikeway from Sand Harbor State Park to Spooner Summit area essentially follows the alignment of the existing export pipeline. Therefore, a new Bikeway could provide a great opportunity for construction of the new export pipeline out of the NDOT SR-28 Right-of-Way and under the Bikeway. There are numerous advantages for operating and maintaining the pipeline under a bikeway as opposed to under the busy SR-28 corridor. This agreement will look at the feasibility of this idea.

The specific agreement details the duties of each agency. The TTD will be preparing preliminary alignment drawings for the Bikeway from the Secret Harbor Parking lot (approx 2 miles south of Sand Harbor) to Spooner Summit that could include the export pipeline along with providing an initial analysis of key environmental constraints, co-location feasibility, and performing a cost-benefit analysis. IVGID will provide technical review of the preliminary phase documents as well as provide pipeline design requirements to be included in the analysis.

The deliverable of the initial scoping phase is to determine if a co-location of the export pipeline and the Bikeway is feasible along a three mile stretch of SR -28. If the conclusion is that a co-location is feasible, then both agencies will work towards an extension of the agreement to pursue further design analysis efforts.

III. FINANCIAL IMPACT AND BUDGET

The TTD will pay for all costs associated with the scope of work to prepare the preliminary alignment and cost benefit analysis for co-location of the Bikeway and the export pipeline. The District will provide pipeline design criteria, review of documents, attendance at meetings and general assistance throughout the initial scoping phase.

Interlocal Agreement with the -5-
Tahoe Transportation District
for Initial Scoping for the Co-location
of the IVGID Export Pipeline with
the SR-28 Bikeway

December 31, 2012

We anticipate that District staff will engage HDR Engineering, the design engineer for the Export Pipeline Project since 2002, to provide review, analysis, and cost estimating for this effort. This contract is expected to be less than \$25,000 and will be approved under staff authority.

IV. ALTERNATIVES

None.

V. 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.

VI. COMMENTS

The Board can choose not to enter into the interlocal agreement and pursue planning, design and construction of the Effluent Export Pipeline in the State Route 28 corridor instead of co-location with the Bikeway.



Project Summary

Project Number:	2524SS1010
Title:	Effluent Export Line - Phase II
Asset Class:	
Division:	24 - Transmission
Budget Year:	2015
Scenario Name:	Active: Yes
Budget Status:	Data Entry
Locations:	
Project Something:	SS - Sewer System

Project Description
<p>As part of the original Effluent Export Pipeline Project, IVGID replaced approximately 6-miles of 16-inch Export Pipeline. These included approximately 18,000 linear feet (LF) in Segment 1 and 11,000 LF in Segment 3. During planning and design of the first phase approximately 13,700 LF of Segment 3 and all 17,300 LF of Segment 2 were identified to be in good condition and were not identified for replacement. In August 2008, a pipe break within the unreplaced portion of Segment 3 washed out State Route 28. Investigation of the leak by IVGID staff and an IVGID-hired corrosion consulting engineer revealed areas of advanced corrosion on the damaged pipeline section, indicating that unreplaced portions of the export line may be nearing the end of their service and replacement of the remaining pipeline should be planned and budgeted.</p> <p>The proposed project, Effluent Export Pipeline Project - Phase II, will replace these two remaining sections within the Tahoe Basin (a total length of approximately 6 miles). Segment 2 is comprised of approximately 17,300 LF of welded, cement mortar lined, high pressure steel pipe. The remaining 13,700 LF of Segment 3 is comprised of ball and spigot, cement mortar lined, low pressure steel pipe. The project will be completed over multiple years in a manner similar to the original Effluent Export Pipeline Project. Like Phase I, the Export line will be replaced using open-cut construction, moving the pipeline to the center of the Southbound travel lane.</p>
Project Internal Staff
The Engineering Department will manage all phases of this project.
Project Justification
<p>The effluent export line transports treated wastewater from Incline Village General Improvement District's (IVGID) wastewater treatment plant to the disposal point at the wetlands southeast of Carson City. This line was constructed in the early 1970's as part of a regional effort to eliminate all wastewater effluent discharges in the Lake Tahoe basin. The effluent export line has been in continuous service since that time. Approximately 6 miles of line was replaced as part of the Effluent Export Pipeline Project - Phase I. Phase II will pursue the replacement of the remaining 6 miles of pipe within the Tahoe Basin.</p> <p>The current Project Cooperation Agreement with the US Army Corps of Engineers will expire with the completion of the Phase I work. IVGID will look to enter into an expanded Project Cooperation Agreement with the US Army Corps of Engineers for 55% funding of all construction costs. The current political climate and financial issues in Washington D.C. make it unlikely that any future funding will be secured for this project. All grant funding has been removed for this project. IVGID will also place the project on the list for the Nevada State Revolving Loan Fund. Funding for this project will be the utility rates.</p>

10

Forecast			
Budget Year	Total Expense	Total Revenue	Difference
2015			
Internal Services	100,000	0	100,000
Segment 3 Construction - Phase 3	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2016			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 1	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2017			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 2	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2018			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 3	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2019			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 4	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2020			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 5	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2021			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 6	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2022			
Internal Services	100,000	0	100,000
Segment 2 Construction - Phase 7	1,900,000	0	1,900,000
Year Total	2,000,000	0	2,000,000
2023			
Internal Services	100,000	0	100,000

Apr 04, 2014 04:15 PM

Project Summary

Segment 2 Construction - Phase 8		1,800,000	0	1,800,000		
Year Total		2,000,000	0	2,000,000		
		18,000,000	0	18,000,000		
Year identified	Start Date	Project Partner			Manager	Est. Completion Date
2012					Engineering Manager	

12

EXHIBIT C

EXHIBIT C

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

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

FROM: Bradley A. Johnson, P.E.
Engineering Manager

SUBJECT: Authorize an Amendment to the Interlocal Agreement with the Tahoe Transportation District for Co-location of the IVGID Export Pipeline with the SR-28 Bikeway - 2014/2015 Capital Improvement Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010

DATE: October 30, 2014

I. RECOMMENDATION

Staff recommends that the Board of Trustees makes a motion to authorize Staff to enter into an Amendment to the Interlocal Agreement between the Tahoe Transportation District and the Incline Village General Improvement District to provide up to \$300,000 in IVGID funding to allow completion of preliminary design and environmental analysis for the co-location of IVGID's Export Pipeline with the SR-28 Bikeway.

II. BACKGROUND

At the January 9, 2013 meeting, the Board of Trustees authorized entering into an Interlocal Agreement with the Tahoe Transportation District (TTD) that allowed for the formal evaluation of the feasibility of co-locating the District's Export Pipeline within the alignment of the proposed bikeway running along the lake side of SR-28 between Sand Harbor State Park and the Junction of SR-28 and US-50 (see attached meeting minutes). The feasibility evaluation was completed and determined co-location is viable over the vast majority of the overlapping alignments. In the areas where co-location was determined to be less than ideal, due primarily to topography constraints, the Export Pipeline can

easily deviate from the non-viable bikeway alignment into SR-28 and then return to the bikeway when the topography is better suited for the pipeline.

The proposed Amendment for the existing Interlocal Agreement would allow the completion of the next steps of the project: completion of preliminary engineering and design and conducting the necessary environmental analysis of the proposed alignment to satisfy the National Environmental Policy Act (NEPA) and the Tahoe Regional Planning Agency (TRPA) requirements.

The proposed Amendment details the duties of each agency. TTD will hold all contracts and will be responsible for managing the design and environmental analysis process. IVGID will provide technical review and project management support.

Should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, District Staff estimates there will be substantial savings and long term operational and maintenance benefits by co-locating the pipeline within the bikeway. Depending on the total length of pipeline eventually replaced, the District could save upwards of \$7,000,000 out of the estimated \$23,000,000 total project cost via co-location and cost sharing with TTD over replacing the pipeline entirely within the SR-28 roadway.

III. FINANCIAL IMPACT AND BUDGET

The estimated cost of the proposed effort is \$1,045,000. TTD will provide the first \$745,000 of those costs and IVGID will be responsible for the remaining costs up to \$300,000.

A total of \$2,000,000 is included in the 2014/2015 Capital Improvement Program (CIP) Budget (see attached data sheet) and there is an additional \$5,200,000 carried forward and available from previous years' CIP budgets.

IV. ALTERNATIVES

The Board can choose not to authorize the interlocal agreement amendment and direct Staff to exclusively pursue planning, design, and construction of the Effluent Export Pipeline in the State Route 28 corridor. However, in doing so, the District is backing out of a partnership opportunity that has the potential to provide the District substantial cost savings.

V. COMMENTS

TTD is scheduled to begin construction of the bikeway from Incline Village to Sand Harbor in Spring of 2015. The project received approval from TRPA in September 2014 and is fully funded. The District has already replaced the effluent export pipeline in this section of SR-28. The success of this first phase of bikeway along with the partnerships established to support it is encouraging for the next phase of bikeway that includes the pipeline co-location.

VI. 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.

Hearing no further public comments, Chairman Wolfe brought the matter back to the Board and called the question – Trustees Wolfe, Smith and Hammerel voted in favor of the motion and Trustees Devine and Simonian voted opposed. The motion was passed.

G. Consent Calendar *for possible action*)

- G.1. Authorize an Amendment to the Interlocal Agreement with the Tahoe Transportation District for Co-location of the IVGID Export Pipeline with the SR-28 Bikeway - 2014/2015 Capital Improvement Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010 (Requesting Staff Member: Engineering Manager Brad Johnson)**
- G.2. Employee Health Insurance Renewal (Requesting Staff Member: Director of Human Resources Dee Carey)**
- G.3. Diamond Peak Ski Resort Medical Services Agreement Renewal (Requesting Staff Member: General Manager Diamond Peak Ski Resort Brad Wilson)**

Trustee Hammerel made a motion to approve the Consent Calendar as submitted; Trustee Smith seconded the motion. Chairman Wolfe called the question and the motion was unanimously passed.

H. GENERAL BUSINESS *for possible action*)

- H.1. Set Date for Public Hearing for January 14, 2015 for the Proposed Amendments to Solid Waste Ordinance #1 (Requesting Staff Member: Director of Public Works Joe Pomroy)**

Director of Public Works Joe Pomroy gave an overview of the submitted memorandum.

Trustee Wolfe made a motion to set the date of a public hearing for the proposed amendments to the Incline Village General Improvement District Solid Waste Ordinance No. 1, entitled "An Ordinance Regulating Solid Waste Matter and the Collection,

EXHIBIT D

EXHIBIT D

<https://livestream.com/IVGID/events/8303850/videos/178110861>

Beginning timestamp 3:05:13, ending timestamp 3:05:28

COMPLAINT

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Ste. 3900
Las Vegas, Nevada 89101

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

September 27, 2018

*Rec'd 10/1/2018
J. Gibson
IVG12*

Via U.S. Mail

Incline Village General Improvement District – Board of Trustees
Kendra Wong, Chair
895 Southwood Boulevard
Incline Village, NV 89451

**Re: Incline Village General Improvement District – Board of Trustees
Open Meeting Law Complaint, OAG File No. 13897-305**

Dear Chair Wong:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML). NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the Incline Village General Improvement District Board of Trustees (District).

The OAG requests that the Board, by and through its legal counsel, prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the response.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before October 12, 2018.

Should you have any questions, please contact Althea Zayas at (702) 486-3224 or via email at azayas@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
CAROLINE BATEMAN
Chief Deputy Attorney General
Bureau of Gaming and Government Affairs

CB:arz
Enclosures



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson St.
Carson City, NV 89701
Phone: 775-684-1100
Fax: 775-684-1108

www.ag.nv.gov

For official use only

Received by: MF
Date Received: 8/13
Complaint Type: _____
Referred to: BCP GI
 OIU OMA ONFU

RECEIVED

AUG 13 2018

ATTORNEY GENERAL
MAIL ROOM

OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law – NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

Salutation: Mr. Mrs. Ms. Miss

Your Name: KATZ AARON L

Last	First	MI	
<u>P.O. Box 3022</u>	<u>Incline Village</u>	<u>NV.</u>	<u>89450</u>
Address	City	State	Zip

Your Phone Number: (775) 833-1008

Home	Cell	Work	Fax
Email: <u>s4s@ix.netcom.com</u>			

Call me between 8am-5pm at: Home Cell Work

Age: Under 18 18-29 30-39 40-49 50-59 60 or older

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Incline Village General Improvement District
(i.e., specific board, commission, agency, or person(s) etc.)

Date of meeting where alleged violation occurred (mm/dd/yyyy): 07/06/2018

SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

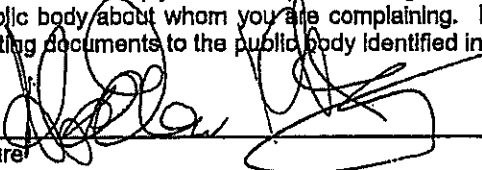
My complaint is:

See attachment with exhibits.

SECTION 3.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is not my private attorney, but rather represents the public. I am filing this complaint to notify the Attorney General's Office of alleged violations of the Open Meeting law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the public body identified in this complaint.


Signature

AARON L. KATZ

Print Name

08/10/2018
Date (mm/dd/yyyy)

SECTION 4. (Optional)

The following section is optional and is intended to help our office better serve Nevada consumers. Please check the categories that apply to you.

Gender: Male Female

Have you previously filed a complaint with our office?: Yes No

If yes, enter in the approximate filing date (mm/dd/yyyy) of your original complaint: _____

I am (mark all that apply):

- Income below federal poverty guideline
- Disaster victim
- Person with disability
- Medicaid recipient
- Military service member
- Veteran
- Immediate family of service member/veteran

Ethnic Identification:

- White/Caucasian
- Black/African American
- Hispanic/Latino
- Native American/Alaskan Native
- Asian/Pacific Islander
- Other: _____

Primary Language:

- English
- Spanish
- Other: _____

May we provide your name and telephone number to the media in the event of an inquiry about this matter?

Yes No

How did you hear about our complaint form (please choose only one):

- Called/visited Las Vegas AG Office Called/visited Carson City Office Called/visited Reno Office
- Attended AG Presentation/Event Another Nevada State Agency/Elected Official Search Engine AG Website
- AG Social Media Sites Media: Newspaper/Radio/TV Other

Return original form to:

Office of the Attorney General – ATTN: OML Coordinator
100 N. Carson St.
Carson City, NV 89701
Fax: 775-684-1108
(Faxed copies will be accepted followed by original)

ATTACHMENT TO NEVADA ATTORNEY GENERAL OPEN MEETING LAW COMPLAINT FORM

INTRODUCTION

The Incline Village General Improvement District ("IVGID") is a general improvement district ("GID") and governmental subdivision of the State [NRS 318.075(1)]. On May 20, 1961 IVGID was created by Washoe County Bill No. 57, (initiating) Ordinance No. 97 [see NRS 318.055(1)(a)]. As such it is an "administrative...executive or legislative body...created by...a...statute of this State" [see NRS 241.015(3)(a)(2)] and a "public body" for purposes of NRS 241¹ [the Open Meeting Law ("the OML")].

After the Washoe County Board of Commissioners ("the County Board") adopted IVGID's initiating ordinance, it appointed "five persons to serve as the first board of trustees of the district" [see NRS 318.080(3)]. Thereafter, IVGID conducted biennial elections for the election of trustees who each serve for terms of 4 years. Elections for trustees are staggered so that in 2018, for instance, two trustees will be elected. In 2016 three trustees were elected [see NRS 318.095(3)].

IVGID's Board of trustees ("the Board") regularly conducts "meetings" subject to the OML in that three or more trustees "gather...to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power" [see NRS 241.015(2)(a)(1)].

NRS 318.055(4)(b) instructs that a GID's basic powers ["(for instance, by way of illustration, 'for paving, curb and gutters, sidewalks, storm drainage and sanitary sewer improvements within the district) as long as]...one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter designated therein...are limited to those expressly set forth in its initiating [and supplemental (NRS 318.077)] ordinance(s)." Given IVGID's initiating ordinance granted it the basic power to "furnish...sanitary facilities for sewerage" [see NRS 318.116(11)], delivering sewer services to the inhabitants of Incline Village and Crystal Bay is one of its permissible activities.

IVGID's sewer effluent pipeline runs south underneath Highway 28 from Incline Village to the north Douglas County line approximately 8 miles of the Stateline to Stateline Bikeway Project from Sand Harbor to Spooner junction. A good portion of this section of Highway 28 (at least 3.75 miles) is failing and requires repair, remediation or replacement. An additional 2.25 miles may be in the same deteriorating condition and requires the same repair, remediation or replacement, however, assessment has not as of yet been initiated. In order to explore possible cost savings, past IVGID Boards have addressed the advisability as well as feasibility of relocating the District's pipeline underneath a proposed shared use pathway project adjacent to Highway 28 ("the pathway project") which is being prosecuted by the Tahoe Transportation District ("TTD") on behalf of 13 project partners.

At the present time the *only* agreement IVGID has entered into with the TTD insofar as the pathway project is concerned, is to share in the cost of an Environmental Impact Statement ("EIS"). There is no agreement that IVGID will in fact be allowed to relocate its pipeline, what the costs will be,

¹ See NRS 241.015(4)(a)(2) and (7).

what portion of TTD's grant will be applied to pipeline relocation (if any), future maintenance responsibilities, etc. In fact Article II, ¶1 of the current interlocal agreement contemplates that there may (or may not) be "a future agreement between IVGID and TTD to pursue final design, permitting and construction."² And regardless, Article II, ¶2 states that either side "reserve(s) the right to... terminate (said) Agreement for any reason upon thirty...day written notice," as well as to "discontinue participation in any future phases of the Co-Alignment project." Moreover, Article II, ¶7 states that "nothing contained in (that) Agreement shall be deemed or construed to create...any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other." Thus although IVGID may have a fund balance in its Utility Fund of some \$7.5 Million which has been collected from rate payers and earmarked for Phase II effluent pipeline repairs/replacement, it is quite evident no agreement exists between TTD and IVGID insofar as the future of the pathway project is concerned. *Nor has the IVGID Board has agreed to contribute any of these funds towards that project*

Meanwhile, TTD has applied to the U.S. Department of Transportation ("USDOT") for a BUILD grant to fund a portion of *its* pathway project. Notwithstanding Article II, ¶7 of the interlocal agreement in place declares that IVGID and TTD "are associated with each other *only* for the purposes and extent set forth in (that) Agreement,"³ TTD has asked IVGID staff to write a letter to the USDOT committing matching IVGID funds given TTD's grant application will be looked upon more kindly if TTD represents there will be matching funds⁴. Thus staff, in tandem with TTD, drafted such a letter and presented it to the IVGID Board's chairperson, Kendra Wong, for her signature, *on behalf of the IVGID Board*. But rather than presenting the proposed letter to the Board for its approval, on July 6, 2018 Ms. Wong affixed her signature⁵. As the Office of Attorney General ("OAG") can see, the letter commits \$7.5 million of rate payer funds as a "match" for construction of TTD's pathway project.

On May 31, 2018, our Supreme Court rendered its opinion in *The Commission on Ethics v. Hansen*, 134 Nev. Adv. Op. 40 (2018). In that case the Court was faced with a circumstance where the executive director of the Ethics Commission's Board, in tandem with its chairperson and attorney, took "action" (filing an appeal of a district court order) which "involved the commitment of public funds" without first obtaining board approval at a public hearing held, in part, for that purpose.

It is footnote 2 of the *Hansen* opinion which complainant believes has relevance to this complaint:

² In other words, nothing more than an agreement to agree.

³ In other words, funding of the EIS.

⁴ Given no agreement exists between IVGID and TTD to pursue final design, permitting and construction of the Co-Alignment project, there is no assurance IVGID will realize any portion of the sought for grant funds in exchange for its financial commitment to match.

⁵ This letter appears at pages 766-767 of the packet of materials prepared by staff in anticipation of the Board's regular July 24, 2018 meeting ["the 7/24/2018 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/7-24-2018_BOT_Packet_Regular_-_as_revised.pdf)]. A copy of the letter is attached as Exhibit "A" to this complaint.

"The underlying premise for the dissent is that the open meeting law does not apply because there was no meeting. But that argument ignores the fact that actions by a public body *must* be taken by the body in an open meeting conducted in accordance with the open meeting law. *When the action taken by the public body requires an open meeting, failure to hold an open meeting itself is a violation. NRS 241.015.*"

The foregoing constitutes the basis of this OML; the Board's failure to take action in an open meeting it is required to take which involves the commitment of public funds to the pathway project.

PROLOGUE

Even though District staff begrudgingly admit IVGID is a "public agency"⁶ governed by a five (5) member Board of trustees [NRS 318.080(3)], complainant feels the OAG has experienced enough recent history with IVGID to understand that nothing could be further from the truth. The District is a commercial enterprise run by unelected staff emboldened by their "fixer," attorney Jason Guinasso. Unelected staff and attorney Guinasso indoctrinate lay trustees as to "the ways of IVGID." These ways mandate that trustees exist to do nothing more than create staff's "policies" (aka rubber stamping). The actual implementation of policy is left to unelected staff, and trustees are told not to interfere⁷. And how would any freshman GID trustee know anything differently?

Not that the IVGID Board has the power to create *any* "policy"⁸ given it is a limited purpose special district [A.G.O. 63-61, p. 103 (August 12, 1963)] and its basic powers are restricted to those expressly included in its initiating [NRS 318.055(4)(b)] and supplemental (NRS 318.077) ordinances "as supplemented by the sections of this chapter (NRS 318 which)...must be one or more of those (basic powers) authorized in NRS 318.116" [NRS 318.055(4)(b)], and none other [Ronnow v. City of Las Vegas, 57 Nev. 332, 341-343, 65 P.2d 133 (1937)], but nowhere in NRS 318.116 is a GID permitted to pass laws or create legislation. Notwithstanding, decades ago staff in essence hijacked the IVGID Board by promoting its adoption of Policy No. 3.1.0,6(f)⁵ which essentially abdicates the power to make essentially all contractual and financial decisions to unelected staff⁹. Based upon this abdication of powers, IVGID staff:

⁶ Actually, they distance themselves from the notion of being a public agency by asserting IVGID is only "quasi-public" (see <https://www.yourtahoepace.com/ivgid/about-ivgid>). And when IVGID's GM speaks, he emphasizes the fact IVGID is so much *more* than "just government" ["we have more business lines than much larger companies. *We aren't just government*" (<https://www.tahoedailytribune.com/news/opinion/outsourced-or-in-house-work/>)].

⁷ See Policy No. 1480 (pages 13-17 at https://www.yourtahoepace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf).

⁸ At best, NRS 318.205 instructs that "the board shall have the power to adopt and amend *bylaws*, not in conflict with the Constitution and laws of the State: 1. For carrying on the business, objects and affairs of the board and of the district. 2. Regulating the use or right of use of any project or improvement." Policies of substance, rather than procedure, violate the Nevada Constitution (Article 8, section 8) and are not bylaws.

⁹ See page 10 at <https://www.yourtahoepace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf> ("contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees. Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and

1. "Hire and retain" *themselves* contrary to NRS 318.180, and "fix their (own) compensation" contrary to NRS 318.185¹⁰;
2. Have initiated litigation against local citizens, and decided whether or not to settle litigation (and if so, upon what terms and conditions), all *without* Board approval;
3. Have "manage(d), control(led) and supervise(d) all the business and affairs of the district" contrary to NRS 318.175(1);
4. Have wasted hundreds of thousands of public dollars worth of goods and services, annually, through the artifice of public philanthropy, again *without* Board approval;
5. Have "dispose(d) of...real and personal property, and any interest therein" contrary to NRS 318.160, *without* going out to public bid and *without* Board approval;
6. Have deceived Washoe County into deeding real property for represented "open space" purposes, when their secret intent was to dispose of that property was secured, for money;

And now IVGID staff, using the Board's chairperson as their tool¹¹, have deceived the United States Government into believing the *IVGID Board* has agreed to match TTD's request for public funds for the latter's pathway project when local sewer rate payers were told these moneys were restricted to IVGID's effluent pipeline replacement.

These are all examples of the same basic problem; *who's driving the bus?* Because it's certainly *not* the IVGID Board. Given the Supreme Court has instructed that the driver of IVGID's bus cannot be unelected staff and their attorney, and that their exercise of such powers when it comes to the expenditure of public funds represents an OML violation, this complaint is filed.

BACKGROUND FACTS

In anticipation of the Board's July 24, 2018 meeting, staff in concert with the Board's chairperson noticed an agenda for that meeting¹². Nowhere in the agenda was the public put on notice of the fact that the IVGID Board intended to discuss Ms. Wong's July 6, 2018 letter to the USDOT in support of TTD's application for grant funding wherein the IVGID Board chairperson had represented that if the grant were approved, the District would make \$7.5 Million of restricted public funds available as matching grant funds for the TTD's (and *not* IVGID's) pathway project. Nowhere was the public put on notice of the fact that Ms. Wong had already signed that letter and dispatched it to

executed by the General Manager or his designee of the District, if it is for an amount less than the advertising threshold of Nevada Revised Statute 332").

¹⁰ In other words, IVGID's public employees are for all practical purposes our GM's employees. And instead of owing 100% of their loyalty to the public which provides their salaries and benefits, our employees owe their loyalty to IVGID's GM.

¹¹ Notwithstanding Ms. Wong has publicly proclaimed on several occasions that no single Board member has the power to do anything on the Board's behalf. When the Board speaks, according to Ms. Wong, it must speak collectively rather than singularly.

¹² See https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT_Agenda_Regular7-24-18.pdf. A copy of the agenda is attached as Exhibit "B" to this complaint.

the USDOT without Board knowledge or approval. Nowhere was the public put on notice that Ms. letter would be buried in the board packet for this meeting under agenda item J, "Board of Trustees Update(s)." ¹³ And notwithstanding the agenda clearly informs the public that there will be "no discussion or action" whatsoever on any such "update" matter, listen to the "discussion" which took place insofar as Ms. Wong's letter was concerned ¹⁴:

Chairperson Wong: "I included in the board packet on page 766, a letter that I signed related to the shared use pathway and our effluent pipeline project that Brad [Johnson (IVGID's director of asset management)] went in depth about. I just didn't want to forget to mention it to you guys (i.e., the Board), so I included a copy here..."

Trustee Callicrate: I don't think I was absent but if that (i.e., the letter) was brought...I would have appreciated that the Board discuss the direction that we wanted to go and then given that to you (i.e., Ms. Wong) before the letter went out. Because that's what we had discussed for other things. I know that I was admonished by the Board for supposedly acting rogue or doing something or speaking out of turn. I know you are the chair but I think that for something like that, especially for spending \$7 Million, I think it is important that we as a Board are apprised of it prior...whatever it might be. Just so I had a 'head's up' it (i.e., the letter) really surprised me. I was happy to see that it was in there, but, you know, we do have some protocols that we should follow with the Board. So that's just my only concern and I wanted to share that with you...

Brad Johnson ¹⁵: For the record...typically when we get a letter of support request it's usually with a time line that doesn't allow for full board discussion. And so historically we've issued letters of support sent by the chair. It is on projects where there is already an interlocal agreement in place ¹⁶. And since we're in (a) Board approved partnership with TTD...we (unelected staff) felt it was appropriate to have the Board chair sign the letter *on behalf of the board* because of that interlocal. But ultimately, because of the deadlines associated with (TTD's) grant application when the request came in from TTD, there wasn't time available to get it into a board packet for discussion by the Board ¹⁷...

Trustee Callicrate: I understand and appreciate the clarification...

¹³ If the OAG goes to the District's web site, it will discover that agendas and board packets for public meetings are posted on line (go to <https://www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-and-agendas>). Go to the Board's July 24, 2018 meeting and see the links to various topics. Click on the link to "board updates" and your office will find the subject letter.

¹⁴ IVGID livestreams its board meetings. The livestream for its July 24, 2018 meeting ("the 7/24/2018 livestream") appears at <https://livestream.com/IVGID/events/8303850/videos/178110861>. The subject discussion appears at 3:02:30-3:05:38 of the 7/24/2018 livestream.

¹⁵ Notwithstanding IVGID staff knew there was to be no discussion of this matter, watch how Brad Johnson voluntarily injects himself into the discussion starting at 3:03:30 of the 7/24/2018 livestream. Mr. Johnson is Jason Guinasso's version of "fixer" insofar as staff matters are concerned.

¹⁶ Remember, the *only* interlocal agreement in place is the one where the District has agreed to contribute up to \$300,000 towards a pathway project EIS.

¹⁷ This is a misstatement of fact. TTD knew of the application requirement as early as April of 2018, and it knew the application deadline was in July of 2018. Why it waited until the eve of application submittal to make request to IVGID staff for a letter of support is a mystery to complainant. Additionally, and as recognized in *Hansen*, staff could have called a special meeting of the Board once TTD's request was made on as little as three working days' notice [see NRS 241.020(2)].

Chairperson Wong: Also, I did read the letter (*which had been prepared by staff* and the TTD) before hand to make sure *I wasn't committing us to spending any funds*¹⁸, it wasn't anything that would commit the District to anything that would be outside the role of...

Attorney Guinasso: I apologize for interrupting you but for this agenda item it says no discussion or action. And so if we want to discuss this (matter) any further, we should probably get it onto the next agenda."

Simply stated, Ms. Wong's letter which staff fully intended be represented as the action of the IVGID Board as a whole, represented to the USDOT that if TTD's grant application were approved, IVGID would commit \$7.5 Million in matching BUILD grant funds towards the subject of TTD's application; *its* pathway project.

ARGUMENT

Until the *Hansen* case, complainant was not going to file an OML complaint because if the IVGID Board had failed to commit the subject \$7.5 Million, complainant could not allege that this financial commitment had not been "clearly and completely" agendized (rather, he could only allege that the commitment had not been approved by the Board). But after *Hansen*, whenever a public agency's staff commits the agency to spending public moneys on an endeavor which requires its governing board's approval, yet there is no approval, an OML violation has occurred. And that's exactly what has taken place here.

Although Ms. Wong's letter speaks to "substantially reduc(ing) pipeline construction costs" and "support(ing)...firefighting activities in the event of a wildland fire along the eastern shore of Lake Tahoe," IVIGD has no power to "furnish facilities for protection from fire,"¹⁹ and there is no evidence that approval of TTD's grant application will reduce pipeline construction costs one *iota*. Although complainant can provide evidence of the latter, he won't because it is not relevant to this complaint. What is relevant is that by depriving the IVGID Board as a whole of making that determination, unelected IVGID staff and attorney Guinasso used Chairperson Wong as their administrative tool to accomplish the same purpose; a purpose which involved the public's possible expenditure of \$7.5 Million in restricted moneys in support of TTD's pathway project.

CONCLUSION

What are the consequences of the Board's commission of yet another OML violation? And yet another instance where unelected staff and "fixer" attorney Guinasso have committed the public to the possible expenditure of public funds on someone else's (i.e., TTD's) project? According to NRS

¹⁸ As the OAG can see, Ms. Wong's letter in fact represented the exact opposite.

¹⁹ Although this is a legitimate potential power a GID may exercise [see NRS 318.116(17)], IVGID has never been granted this power by the Washoe County Board of Commissioners; a mandatory pre-requisite to the assumption of power [see NRS 318.077 ("the board shall cause proceedings to be had by the board of county commissioners similar, as nearly as may be, to those provided for the formation of the district (see NRS 318.055(4)(b)), and with like effect")].

241.036, "the action of any public body taken in violation of any provision of this chapter is void." This means that at the very least, Ms. Wong's financial commitment to USDOT should be declared void.

But there is a larger issue at play here. And that's the Board's abdication to unelected staff of essentially all duties and responsibilities so it becomes staff, rather than the Board, which makes the decision to spend or commit the expenditure of public funds.

Complainant has shared his views of IVGID with the OAG on several past occasions; that it is an enterprise run by non-elected and mostly nonresident staff who have callous disregard for the rights of IVGID's citizens. In the words of the late George Carlin, their "arrogance is stunning." Hopefully the resolution of this complaint will provide behavior modification.

After *Hansen*, all of the above *ultra vires* acts can become OML violations to the extent they involve the expenditure of public moneys and are not expressly approved by the IVGID Board as a whole. And as a result, the OAG's prior decision in OAG No. 13-008 (that the OAG has no jurisdiction to construe bylaws or policies that do not conflict with the OML), must now be called into question. A message needs to be sent so an end can be put to impermissible acts such as these. A message needs to be sent that unelected staff cannot take actions in the name of the District when as here, they must be taken by the IVGID Board at a public meeting. And a message needs to be sent to the IVGID Board that their duties as members involve far more than simply "setting policy." Because if such messages are not sent, the IVGID Board, in name only, will simply ratify such acts after-the-fact, whenever they are challenged; just the way the Ethics Commission in the *Hansen* case attempted to ratify its executive director's, chairperson's and attorney's decision to file an appeal.

Given this complaint does not represent the first instance of IVGID's OML violations, complainant and others believe something *more* is required to "get the Board's attention" and to protect the public. Given *only* "the Attorney General shall investigate and prosecute any violation of...(NRS) chapter" 241 [NRS 241.039(1)]; and, only he/she "may sue in any court of competent jurisdiction...for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter" [NRS 241.037(1)]; amongst other remedies, complainant feels that the time has come to secure an injunction which permanently enjoins future violations of NRS Chapter 241 by IVGID. Remember, in the last eight years the OAG has found IVGID guilty of at least eighteen (18) OML violations, and there have been at least another four (4) which would have resulted in similar violations were it not for IVGID's after-the-fact corrective action. Complainant knows of at least two pending OML complaints (OAG No. 13897-263) he believes may result in further violations. Plus he knows of a third he believes would have resulted in another violation had he not filed a complaint to force IVGID into complying with the OML (OAG No. 13897-282). If an injunction were obtained and IVGID's wayward ways continued, the perpetrator(s) would be in contempt of court and for the first time face very, very real consequences.

Finally, given each Board member was present at the Board's July 24, 2018 meeting and thus cannot claim ignorance insofar as the underlying facts recited herein are concerned, complainant also asks that the OAG invoke the criminal and civil penalties of NRS 241.040. This means bringing an action to recover civil penalties against the Board of trustee members who have allowed its

chairperson, GM and attorney to in essence take action in violation of chapter NRS 241. Complainant asks that the assessment of civil penalties be levied against individual trustees *personally* for at least two reasons. First, if it doesn't cost these public stewards personally, then the purpose served will not be achieved. And second, if Board members allow IVGID's finances to be depleted by a like amount (i.e., reimbursement), it will mean that the real people who have paid these penalties are the citizens who have been prejudiced by Board member's OML violations. Please send a message.

EXHIBIT "A"



July 6, 2018

The Honorable Elaine Chao
United States Department of Transportation
1200 New Jersey Avenue SE
Washington DC, 20590

RE: SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support

Dear Ms. Chao,

The Incline Village General Improvement District (IVGID) appreciates and supports the Tahoe Transportation District's (TTD) BUILD grant application for the next phase of the State Route 28 Shared Use Pathway. We are a rural area that relies upon this critical infrastructure and we are consistently challenged with safety issues and congestion along the State Route 28 corridor of the Lake Tahoe Basin. This is a narrow two-lane highway with steep topography and traffic at peak season can be delayed for hours impeding commuters, visitors, and emergency response vehicles. Working together, the project partners set the goal of this multi-phased project to clear congestion, provide safe multi-modal access to Lake Tahoe's east shore, provide road safety improvements, underground and replace 40-80+ year old utility infrastructure, and to control erosion along the highway shoulder in order to protect the highway and Lake Tahoe's water quality.

Within this corridor, IVGID operates and maintains approximately 11.6 miles of underground pipeline that carries treated wastewater effluent out of the Tahoe Basin. This pipeline, originally constructed in 1970, is approaching the end of its service life. IVGID has replaced 5.5-miles of the pipeline to date and condition assessment activities have identified an additional 3.75-miles that must be replaced in the near future. Additional condition assessment of the final 2.25-miles is scheduled for the fall of 2018.

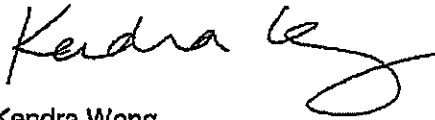
It is IVGID's desire to relocate the replacement sections of pipeline to within the Shared Use Pathway as much as physically possible within the project area. As one of 13 project partners, IVGID is providing \$300,000 in funding, via a January 2013 Interlocal Agreement with TTD (amended October 2014), for the current Environmental Analysis which is on track to be completed this year.

The entire length of the 3.75-miles of pipeline identified for near term replacement is located within the alignment of the proposed next phase of the SR-28 Shared Use Pathway. IVGID believes there is a tremendous opportunity to relocate the pipeline out of the narrow highway footprint and into the pathway alignment. Doing so eliminates future traffic congestion during normal pipeline maintenance, substantially reduces pipeline construction costs, and halves the duration of traffic impacting construction. Additionally, co-location would allow the installation of fire hydrants on the replacement pipeline to support the firefighting activities. In the event of a wildland fire along the eastern shore of Lake Tahoe, IVGID has \$7.5 million dollars available as a match for this BUILD grant to allow co-location and construction of the replacement 3.75-mile pipeline segment. ★

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
893 SOUTHWOOD BOULEVARD · INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 · FAX: (775) 832-1122 · WWW.YOURTAHOEPLACE.COM

As you are aware, our small rural communities need assistance in replacing aging infrastructure. But just as important, this National Scenic Byway deserves our attention in providing the over 2.6 million motorists in this stretch a safe driving experience, the over one million visitors safe multi modal access to their public lands, and to protect the water clarity of this national treasure, Lake Tahoe.

Sincerely,



Kendra Wong
Chairwoman
Board of Trustees
Incline Village General Improvement District

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
893 SOUTHWOOD BOULEVARD · INCLINE VILLAGE, NV 89451
PH: (775) 832-1100 · FAX: (775) 832-1122 · WWW.YOURTAHOEPLACE.COM

EXHIBIT "B"



NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on **Tuesday, July 24, 2018** in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

- A. PLEDGE OF ALLEGIANCE*
- B.1. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*
- B.2. ROLL CALL OF THE CANDIDATES FOR IVGID BOARD OF TRUSTEES*
Tim Callicrate....Sara Schmitz.... Bruce Simonian....Kendra Wong
- 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

Incline Village General Improvement District

Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

www.yourtahoeplace.com



NOTICE OF MEETING

Agenda for the Board Meeting of July 24, 2018 - Page 2

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. DISTRICT STAFF UPDATES*

1. Recap of 4th of July activities/events – a verbal report provided by Director of Parks and Recreation Indra Winquest

F. GENERAL BUSINESS (*for possible action*)

1. Receive and Review the Draft 2018 Community Services Master Plan (Requesting Staff Members: Director of Parks and Recreation Indra Winquest and Director of Asset Management Brad Johnson)
2. Approval of the District's Form 4410LGF Indebtedness Report and related Debt Management Policy as of June 30, 2018 for filing with the Nevada Department of Taxation and the Washoe County Debt Commission **AND** Approval of Form 4411LGF Five Year Capital Improvement Plan, related IVGID prepared Five Year Capital Project Summary, and Carry Over Schedule, for the fiscal years starting 2018-2019, for filing with the Nevada Department of Taxation, the Washoe County Clerk and the State of Nevada Legislative Counsel Bureau (Requesting Staff Member: Director of Finance Gerry Eick)
3. Review, Discuss, and Comment on a Sample Popular Reporting format under 2018 Board Work Plan. (No action will be taken to adopt a specific report.) (Financial Reporting Board Work Plan) (Presenting Staff Member: Director of Finance Gerry Eick)
4. Review, discuss, and possibly authorize an Additional Services Addendum for Electromagnetic Remote Field Testing Inspections of the Effluent Export Pipeline – 2018/2019 CIP Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendor: PICA Corp in the Amount of \$480,000 (Requesting Staff Member: Director of Asset Management Brad Johnson)



NOTICE OF MEETING

Agenda for the Board Meeting of July 24, 2018 - Page 3

5. Current and Potential Outside Agency Project Partnerships (Master Plan/Capital Plan Board Work Plan) (Presenting Staff Member: Director of Asset Management Brad Johnson)
 6. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law ***(No Open Meeting Law Violation)*** as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-263, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 and to inform our public (Chairwoman Kendra Wong)
 7. Review, discuss, receive Board direction and possibly approve a Board Correspondence Policy to be included in Policy 3.1.0. (Requesting Board Member: Trustee Tim Callicrate)
- G. DISTRICT STAFF UPDATE *(for possible action)*
1. General Manager Steve Pinkerton
- H. APPROVAL OF MINUTES *(for possible action)*
1. Regular Meeting of May 23, 2018
 2. Regular Meeting of June 13, 2018
- I. REPORTS TO THE IVGID BOARD OF TRUSTEES*
1. District General Counsel Jason Guinasso
- 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*
- K. CORRESPONDENCE RECEIVED BY THE DISTRICT*
- 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)*



NOTICE OF MEETING

Agenda for the Board Meeting of July 24, 2018 - Page 4

N. ADJOURNMENT *(for possible action)*

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Thursday, July 19, 2018 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of July 24, 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.yourtahoepace.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.**

DATE	DAY OF THE WEEK	TIME	LOCATION	MEETING	ITEMS SLATED FOR CONSIDERATION
02/27	Wednesday	6 p.m.	Chateau	2019 Regular Board Meeting Trustee Callicrate out of state 01/28 to 02/12	Budget Introduction (IW, GE, SJP) 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 Tentative: July 4 th and Beach Update Land Policy – IVGID Code, Title 5 Award construction contract for the Incline Park Improvements (<i>Consent Calendar</i>) Ski season Passes – 2020 Review, discuss, and possibly take action upon the letter dated January 12, 2019 from Washoe County School District regarding purchase of old elementary school site (771 Southwood Boulevard, Incline Village, NV.) (Requesting Staff Member: District General Manager Steve Pinkerton)
03/13	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Operating Budget presentation
03/18	Monday	6 p.m.	Chateau	Regular Board Meeting	Capital Budget presentation CIP Tour
04/10	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Media services Tentative draft budget Utility rate hearing
05/01	Wednesday	6 p.m.	Chateau	Regular Board Meeting	CSMP (may move to a Saturday)
05/22	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Approve District budgets and Recreation Roll
06/12	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
06/19	Wednesday	6 p.m.	Chateau	Trustee Callicrate out of country 06/04 to 06/30 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	
		6 p.m.	Chateau	Regular Board Meeting	
		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
------	-----------------	------	----------	---------	--------------------------------

<i>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</i>					
					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