

## M E M O R A N D U M

**TO:** Board of Trustees

**FROM:** Tim Callicrate  
Board Chairman

Josh Nelson  
General Counsel

**SUBJECT:** Case No. CV18-01564 Mark E. Smith v. IVGID  
Review, discuss and possibly approve a settlement agreement  
with the plaintiff

**DATE:** June 29, 2022

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to approve the settlement agreement with the plaintiff in Mark E. Smith v. IVGID, Case No. CV18-01564.

### **II. BACKGROUND**

The parties in Mark E. Smith v. IVGID, Case No. CV18-01564 have engaged in settlement discussions to resolve the case. This item proposes a settlement agreement for the Board of Trustees' consideration. Of note, IVGID agrees to pay plaintiff \$77,457.85. The plaintiff agrees to dismiss the case with prejudice. Both parties agree to release each other from any future related claims, and neither party admits liability.

The settlement agreement has already been signed by plaintiff. If approved by the Board, it will finally resolve the case. If the Board declines to approve the case, the litigation will continue.

An updated breakdown of all fees and costs incurred through the date of this meeting in this case will be provided at the June 29, 2022 meeting. Attached is the recap as of April 2021.

Date	Action	Billing Period	Invoice Amount	Invoice Amount Paid	Amount Authorized by the BOT	Amount remaining in authorization
08/23/2018	Lawsuit served to the District					
09/26/2018	Board advised of pending litigation; see GM's report for 09/26/2018 meeting Trustee Dent, during GM update, asks about authorized funding; GM says he authorized \$50K under his authority					\$50,000.00
10/16/2018	Engagement Contract signed with ETS					
06/10/2019	Invoice 965524	08/07/2018 – 06/07/2019	\$45,608.82	\$45,608.82		\$4,391.18
06/19/2019	Additional funds approved by the BOT				\$10,000	\$14,391.18
10/03/2019	Invoice 967317	06/04/2019 – 10/01/2019	\$25,661.89			
01/22/2020	Invoice 967573	09/11/2019 – 01/21/2020	\$10,603.50			
01/22/2020	Additional funds approved by the BOT				\$7,500	\$21,891.18
04/02/2020	Invoice 967858	12/16/2019 – 04/01/2020	\$6,017.40			
05/14/2020	Invoice 967965	01/23/2020 – 05/12/2020	\$7,739.90			
08/11/2020	Invoice 970825	05/13/2020 – 08/10/2020	\$2,639.45			
09/10/2020	Invoice 970877	08/11/2020 – 09/09/2020	\$82.50			
10/08/2020	Invoice 970906	9/10/2020 – 09/11/2020	\$165.00			
12/08/2020	Invoice 970994	9/12/2020 – 12/04/2020	\$467.50			
12/10/2020	Payment made (approved by the BOT on 12/09/2020)			\$21,891.18	\$21,891.18	
	Balance due to ETS as of December 14, 2020	\$31,485.96				
03/18/2021	Payment made (approved by the BOT on 03/10/2021)			\$20,485.96	\$20,485.96	
	Balance POTENTIAL due to ETS as of March 18, 2021 – charges are in dispute and may be reversed or paid by IVGID or others.	\$11,000.00				
03/31/2021	Authorization for \$10,000 was requested by Staff to the Board of Trustees – it was approved and the retainer check was issued and delivered to ETS.				\$10,000.00	
		TOTALS	\$98,985.96	\$87,985.96	TOTAL AUTHORIZED	\$97,985.96

**Best, Best & Krieger:**

Invoice 874648 \$2974.50, Invoice 877705 \$635.07, Invoice 879678 \$935.00, Invoice 879679 \$990.00, Invoice 886192 \$408., and Invoice 902542 \$413 = TOTAL \$6,356.07

00

**Grand total spent to date of this matter: \$103,929.03**

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into this \_\_\_ day of June, 2022, by and between Defendant Incline Village General Improvement District (“District”) and Plaintiff Mark Smith (“Smith”). The District and Smith are collectively referred to as “Parties.” The effective date (“Effective Date”) of this Settlement Agreement shall be the last date that this Settlement Agreement is executed by all of the Parties.

**RECITALS**

WHEREAS, on or about October 19, 2017, Smith submitted a request for records to District under the Nevada Public Records Act; and

WHEREAS, after District asserted that the records were subject to the attorney-client privilege, Smith filed a lawsuit against the District, District’s then Board of Trustees President Kendra Wong and District’s then General Counsel Jason Guinasso in the Second Judicial District Court, Washoe County, case number CV18-01564 (the “Action”); and

WHEREAS, Kendra Wong and Jason Guinasso were previously removed from the Action and District remains the sole defendant;

WHEREAS, Smith and District wish to enter this Settlement Agreement to finally resolve their dispute related to the Action, including all related known or unknown claims.

NOW THEREFORE, in consideration of the foregoing, the Parties intending to be legally bound by this Settlement Agreement agree as follows:

**AGREEMENT**

1. Recitals Incorporated. The Recitals listed above are incorporated into and made a part of this Settlement Agreement.

2. Payment of Settlement Funds. In consideration of this Settlement Agreement, and the promises set forth herein, the District agree to pay Smith the total sum of Seventy-Seven Thousand Four Hundred Fifty-Seven Dollars and Eight-Five Cents (\$77,457.85) (“Settlement Amount”). The District shall pay the Settlement Amount by way of a check made payable to “Mark Smith”, and made available for pick-up by Mark Smith in the IVGID Clerks Office, within ten (10) days of the Effective Date.

3. Dismissal of Action. In further consideration of this Settlement Agreement, and the promises set forth herein, Smith will execute and file with the court a full and complete dismissal of the Action, with prejudice, within five (5) business days of receipt of the Settlement Amount.

4. Release by Parties. Each party hereby releases, acquits, and forever discharges the other party and its respective agents, employees, members, managers, elected and appointed officials, representatives, administrators, attorneys, insurers, lenders, assigns, heirs, and successors in interest, and each of them, from any and all claims, demands, and causes of action, whether known or unknown, suspected or unsuspected, including, but not limited to, claims arising out of, connected with, or incidental to the Action.

5. Representation and Warranty. The Parties and signatories hereby each represent, covenant and warrant that they are authorized to enter into and execute this Settlement Agreement

and they have not previously assigned any claims released or assigned in this Settlement Agreement, in whole or in part, or taken any other steps which would adversely affect the rights that are the subject of this Settlement Agreement.

6. Consultation With Legal Counsel. The Parties represent that they have consulted legal counsel prior to the execution of this Settlement Agreement and have executed this Settlement Agreement with full knowledge of its meaning and effect.

7. Execution of Terms of Agreement. The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Settlement Agreement that may be reasonably necessary or appropriate to effectuate the terms, conditions and provisions hereof.

8. Time is of the Essence. Time is of the essence with regard to the performance of the terms and conditions set forth in this Agreement.

9. Attorneys' Fees Incurred in Resolving the Dispute. Except for the enforcement of this Settlement Agreement as set forth in Section 15, the Parties agree that they will each bear their own attorneys' fees, costs and expenses, including any and all expert and consultant fees, incurred in connection with the Action and this Settlement Agreement.

10. Drafting of Agreement. This Settlement Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this Settlement Agreement.

11. Agreement Binding on Successors. This Settlement Agreement, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors-in-interest and assigns of the respective Parties hereto.

12. Entire Agreement. This Settlement Agreement embodies the entire understanding and agreement between the Parties pertaining to the matters described herein and supersedes and cancels all prior oral or written agreements between the Parties as it relates to the Action. Each party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Settlement Agreement, that induced the other party to sign this document. No modification of this Settlement Agreement shall be valid unless agreed to in writing by the Parties.

13. Counterparts. This Settlement Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile and email/PDF signatures, when received, shall have the same force and effect as original signatures for all purposes.

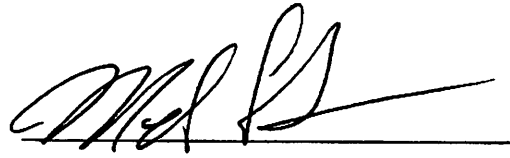
14. Governing Law: Should any Party to this Settlement Agreement bring legal action against the other, the case shall be handled in Washoe County and pursuant to Nevada law, and the party prevailing in such action shall be entitled to reasonable attorneys' fees, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment, together with all costs.

**IN WITNESS WHEREOF**, the Parties hereto have caused this document to be executed on the last day set forth below.

**INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT**

**MARK SMITH**

By: \_\_\_\_\_  
Indra Winqest  
General Manager



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Dated: \_\_\_\_\_, 2022

Dated: 11 JUNE, 2022