



December 21, 2017

A Message to Our Community from IVGID's General Counsel Jason D. Guinasso, Esq.

EXECUTIVE SUMMARY

IVGID Statement Regarding 87 Unbuildable Tax Delinquent Properties Acquired From Washoe County in October of 2012 and the Subsequent Sale of Three Properties Related Thereto Between 2012 and 2015

For the complete statement, please click here:

<https://www.yourtahoeplace.com/news/unbuildable-tax-delinquent-properties>

In 2009, Incline Village General Improvement District's Board of Trustees adopted a Policy 16.1.1 entitled Recreation Roll which discussed Unbuildable Parcels and the process for how these parcels come back onto the Recreation Roll.

In 2012, Incline Village General Improvement District was approached by the Washoe County Treasurer to see if they were interested in acquiring approximately 87 unbuildable parcels and do so under NRS 361.603. The Incline Village General Improvement District responded yes they were interested and the process was completed. It should be noted that the part of the process included going before both the Washoe County Commissioners and the Incline Village General Improvement District Board of Trustees; both bodies approved the transaction.

Between 2014 and 2015, three unbuildable parcels were sold to private parties in accordance with Policy 16.1.1 specifically paragraph 5. which reads as follows:

An unbuildable parcel that has been removed from the Recreation Roll by petition can be restored to the Recreation Roll, and thereby have recreation privileges restored by first paying the total amount of recreation and, if applicable Beach Fees that had been levied since the parcel was taken off the Recreation Roll, plus any fees or penalties permitted by the State of Nevada as defined in Nevada Revised Statute (NRS) 99.040(1).

Using one parcel as an example at the time of acquisition (2012), the amounts owed was \$11,059.42, of which \$10,148 was due to the Incline Village General Improvement District in past due Recreation Fees and \$911.42 was due to Washoe County in past due property taxes. Washoe County waived its claim for the past due property taxes as defined in Nevada Revised Statutes 361.603 and did so at a public meeting which was unanimously passed.

When the sale was finalized, the Incline Village General Improvement District followed its policy and the sale price totaled all of the back Recreation Roll fees owed on the parcel up to the date of sale. While the ownership of the parcel changed, the identification of the parcel did not and has not up to today. The parcel remains unbuildable and the good news is that the parcel is now collecting the full Recreation Roll fees and Washoe County is collecting property taxes it assesses.

Incline Village General Improvement District completely halted the sales of these parcels following these three sales in order to reflect on the process and contemplate an updated policy. It is anticipated that an updated policy will become a part of the Incline Village General Improvement District code which is forecasted to be presented to the Incline Village General Improvement District Board of Trustees in February 2018.

IVGID has not violated any law or acted in any way to harm the public. The Bitterbrush properties were legally acquired. Thereafter, three of the Bitterbrush properties acquired were sold. The Washoe County Assessor label of unbuildable associated with the Bitterbrush properties will remain preserved in perpetuity because the properties in question are unbuildable and have no other value other than the Recreation and Beach privileges associated with them. In addition to the stated public purpose being preserved, IVGID continues to have the ability to serve the important public purpose of recovering delinquent fees and reinstating these properties onto the recreation roll. It has been three years since the last property was sold because IVGID has placed a moratorium on the sale of the properties until a process and procedure for sales is adopted by the Board. Accordingly, IVGID will not sell any of the Bitterbrush properties until an updated policy can be prepared, considered, and approved, in an open publicly noticed meeting, by the IVGID Board of Trustees.

While it is unfortunate that all the forgoing factual information has not been considered by some of IVGID's public and was not otherwise included in the media reports, IVGID maintains its commitment to transparency in government. IVGID welcomes any and all questions from the public which can be sent to IVGID at info@ivgid.org or directly to your IVGID District General Manager Steve Pinkerton at sjp@ivgid.org.



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IVGID Statement Regarding 87 Unbuildable Tax Delinquent Properties Acquired From Washoe County in October of 2012 And The Subsequent Sale of Three Properties Related Thereto Between 2012 and 2015.

Over the last several weeks, IVGID has received several inquiries regarding 87 Unbuildable Tax Delinquent Properties most of which are within the Bitterbrush subdivision (herein after referenced as the “Bitterbrush Properties”) acquired from Washoe County in October of 2012 and the subsequent sale of three properties related thereto between 2012 and 2015.

Inquiries came from two members of the community as well as a Washoe County Commissioner. Additionally, on December 21, 2017, the *Reno Gazette Journal* published a report about the acquisition and sale of the Bitterbrush properties.

Because of the renewed interest in these 87 Unbuildable Tax Delinquent Properties Acquired from Washoe County in October of 2012, District General Counsel provided a report to the IVGID Board on December 13, 2017. See video clip of entire report here: <https://livestream.com/IVGID/events/7976407/videos/167213764> (livestream approximately 4:12). This statement will repeat many of the factual points made in District General Counsel’s report and provide clarification regarding the acquisition and sale of Bitterbrush properties for interested members of the public.

Acquisition of the Non-buildable Tax Delinquent Properties

In 2012, IVGID acquired 87 unbuildable tax delinquent properties from Washoe County in accordance with NRS 361.603. Most of the acquired properties were originally a part of the Bitterbrush Subdivision. As explained in a July 31, 2012 Board Memorandum, the primary interest in these parcels was that 69 of the parcels were carried on the Recreation Roll and as such impacted IVGID’s annual budget. The impact was that they were shown as owed and were never collected therefore IVGID’s Recreation Roll revenue never matched what was actually paid.

By acquiring the properties, the District’s stated the objective was to put itself in a position to have an accurate Recreation Roll. In this regard, unless and until IVGID owned the property, IVGID was stuck with counting the uncollectable fees from these unbuildable tax delinquent properties as a part of its budget and again never having the Recreation Roll revenue match what was actually paid.



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Importantly, the Bitterbrush properties are considered unbuildable, and remain so today, and lack any value other than the recreational and beach privileges attached to them. The acquisition of the Bitterbrush properties allowed IVGID to accomplish three important objectives that serve the public's interest: (1) Recover delinquent fees; (2) Re-instate the properties back onto the Recreation Roll with property owners who would pay the recreation and beach facility fees and taxes to Washoe County; and (3) Retain an interest in property within its jurisdiction that currently has no other market value other than the fact that the property retains Recreational and Beach privileges. Additionally, the Bitterbrush properties, because they are unbuildable, would always remain open space whether they remained IVGID property or were sold after acquisition.

IVGID's Authority to Acquire and Sell Property

NRS 318.160 gives the Board authority to acquire, dispose of and encumber property. In this regard, the statute provides:

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

In addition, IVGID's Board of Trustees, back in 2009, adopted Policy 16.1.1, Recreation Roll, which specifically states, in paragraph 5., the following:

An unbuildable parcel that has been removed from the Recreation Roll by petition can be restored to the Recreation Roll, and thereby have recreation privileges restored by first paying the total amount of recreation and, if applicable Beach Fees that had been levied since the parcel was taken off the Recreation Roll, plus any fees or penalties permitted by the State of Nevada as defined in Nevada Revised Statute (NRS) 99.040(1).

With regard to acquisition of the Bitterbrush properties, IVGID Staff was given specific direction from the IVGID Board of Trustees on August 8, 2012, to acquire the Bitterbrush properties from Washoe County. The Washoe County Commissioners had also unanimously approved the acquisition.



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After the properties where acquired, IVGID sold three properties, including:

- APN 126-294-28 (400 Fairview Blvd.)
 - Purchase Contract was entered into on January 3, 2014.
 - Closed March 3, 2014
 - Sale price: \$14,095
 - Sale price was based on back Recreation and Beach facility fees owed to IVGID at time of sale consistent with IVGID Policy 16.1
 - No HOA dues owed
 - No back taxes owed to Washoe County because Washoe County waived its rights to collect delinquent taxes when it transferred the property to IVGID.
- APN 126-294-29 (400 Fairview Blvd.)
 - Purchase Contract was entered into on June 27, 2014
 - Closed July 18, 2014
 - Sale price: \$14,095
 - Sale price was based on back Recreation and Beach facility fees owed to IVGID at time of sale consistent with IVGID Policy 16.1.
 - No HOA dues owed
 - No back taxes owed to Washoe County because Washoe County waived its rights to collect delinquent taxes when it transferred the property to IVGID
- APN 126-294-18 (400 Fairview Blvd.)
 - Purchase Contract entered into on November 20, 2015
 - Closed December 10, 2015
 - Sale price: \$17,152.55
 - Sale price was based on back Recreation and Beach facility fees owed to IVGID at time of sale consistent with Policy 16.1.
 - No HOA dues owed
 - No back taxes owed to Washoe County because Washoe County waived its rights to collect delinquent taxes when it transferred the property to IVGID

It should be noted, as an example of one of the sold parcels, that when acquired the past due amount of \$11,059.42 consisted of \$10,148 due to IVGID in past due Recreation Roll fees and \$911.42 in past due taxes due to Washoe County which Washoe County waived at the time of transfer. This is important information for the public to know because the media reports could lead a reader to believe that the entire amount of the delinquent tax obligations on the Bitterbrush properties was due and owing to Washoe County. In this regard, Washoe County collects IVGID's Recreation and Beach Fees via the Washoe County tax bill, so if



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IVGID were to pay back the \$11,059.42 in total on the parcel in the forgoing example then Washoe County would be required to write a check payable to IVGID for \$10,148 and would only keep the remaining \$911.42

With regard to the foregoing referenced sales, IVGID Staff exercised its authority to consummate contracts valued under \$50,000 under IVGID Policy 3.1.0(f). This policy states:

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.

However, after the conclusion of the last sale in 2015, IVGID Staff determined that further thought needed to be given to the process and procedure for selling the Bitterbrush properties and consulted with District General Counsel. In response, District General Counsel recommended that a moratorium be placed on the sales of the acquired properties until such time as a more detailed policy could be drafted and presented to the IVGID Board of Trustees regarding a process and procedure for receiving offers and approving contracts for the sale of acquired tax delinquent properties from Washoe County. In this regard, IVGID Staff and District General Counsel agreed to include the drafting of a policy as a part of the District's effort to update and codify its policies, practices and procedures into the IVGID Code. Since December of 2015, there have not been any sales of the Bitterbrush properties and a draft framework of the IVGID code is slated for presentation to the IVGID Board of Trustees in February of 2018.

The Properties That Were Sold Were Sold In Accordance With The Normal Process For Selling Property.

Contrary to the narrative published to the public through various media outlets, the sale of Bitterbrush Properties were not "quiet" or "secret" or done without IVGID Board of



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Trustees oversight. In this regard, a real estate agent reached out to IVGID to inquire as to whether any of the property it owned in the Bitterbrush subdivision was available for purchase. All the requisite documents for consummating the sale were signed, an escrow was completed, and the transfer of the deeds were recorded. At no time during this process did Washoe County assert an interest in the properties or otherwise require a payment for delinquent taxes.

Thereafter, the properties were placed back onto the Recreation Rolls in accordance with IVGID Board Policy 16.1.1. Additionally, the sales of these properties were reported to the IVGID Board of Trustees through the normal budgeting and reporting process. In this regard, these sales were referenced in the Comprehensive Annual Financial Report (CAFR) presented to and approved by the IVGID Board of Trustees and submitted to the State. See page 48 of 2014 CAFR:

<https://www.yourtahoeplace.com/uploads/pdf-ivgid/2014CAFReport.pdf>; page 57 2016 CAFR:

https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_12-13-17.pdf; page 54 of 2017 CAFR:

https://www.yourtahoeplace.com/uploads/pdf-ivgid/Item_G.4._-_CAFR_12.13.17.pdf. The sales were also addressed in the 2014 Budget Work Session, page 4, Item 15:

https://www.yourtahoeplace.com/uploads/pdf-ivgid/bot_packet_special_5_6_2014.pdf, as well as the 2015 Budget Work Session, page 7, item 14:

https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Special_Meeting-Budget_Workshop4-2-2015.pdf.

The sales of the Bitterbrush properties was common knowledge to many in the community. For example, the issue was discussed by candidates running for the IVGID Board of Trustees with IVGID staff. See October 1, 2014, e-mail string between candidates for IVGID Trustee, sitting Trustees, and IVGID Staff.

IVGID Did Not Misrepresent to Washoe County the Purposes for Acquiring the Bitterbrush Properties.

In a letter dated December 18, 2017, the Washoe County District Attorney did not dispute that the sale of the Bitterbrush property was within IVGID's legal authority. Rather, the Washoe County District Attorney asserted that the sale should have resulted in delinquent taxes being repaid to Washoe County under NRS 361.603(4). This argument hinges on the Washoe County District Attorney's stated assumption that IVGID somehow misrepresented the purposes for which it acquired the Bitterbrush properties - this assumption is false. No misrepresentation about the purposes for acquiring the property where made at the time of acquisition or anytime thereafter and remember, as stated above, about 90% of the fees owed on each parcel is IVGID's Recreation Fees.



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When IVGID Staff spoke with the Washoe County Treasurer's Office about the possibility of claiming the lots off the tax rolls, IVGID Staff explained that IVGID was interested in possibly selling the lots in order to recover delinquent fees. IVGID Staff then inquired if part of the transaction with Washoe County to acquire the Bitterbrush properties needed to include either a process or understanding of how that would be accomplished. Additionally, staff asked if IVGID would be required to make sure Washoe County received delinquent taxes if it sold any of the Bitterbrush properties after they were transferred to IVGID. IVGID emphasized that it was open to whatever might be necessary to have back taxes distributed if that was a term of sales. However, when the final deeds were completed and delivered to IVGID by Washoe County, there were no deed restrictions. Having noticed this fact, IVGID Staff contacted the Washoe County Treasurer's office and inquired about what had ultimately been decided. IVGID Staff was informed that the Washoe County District Attorney had advised the Washoe County Treasurer to issue the deeds free and clear, with no provision for recovery of the delinquent taxes. At the time of the sales, Washoe County did not contact IVGID to assert any interest in collecting delinquent taxes.

Notably, since the last sale in December of 2015, no one from Washoe County's staff or the Washoe County District Attorney's office attempted to speak with anyone at IVGID about the sales of the Bitterbrush properties or any concerns related thereto prior to sending this letter.

The buyers of each of these three unbuildable parcels own property in either Crystal Bay (2) or Rocky Point (1) and through the acquisition of these unbuildable parcels are now paying Recreation Fees and Washoe County property taxes on two parcels each for a total of six parcels instead of three parcels i.e. their original parcel where their residence sits and the purchased unbuildable parcel. At the time of purchase of the unbuildable parcels, all buyers understood that the parcels they were purchasing were unbuildable and will remain that way in perpetuity.

The residents who own parcels in Crystal Bay pay a reduced Recreation Fee from those residents who own parcels in Incline Village. The reduced Recreation Fee is because the parcel owners in Crystal Bay do not have access to the restricted access beaches located within Incline Village and the determination to waive that access, when it was offered during the merging of Crystal Bay General Improvement District into the Incline Village General Improvement District, was done by its citizen representatives in an open public meeting during merger proceedings. That waiver remains in place today and all real estate professionals within the area explain that difference to all who are looking to acquire property in either community.



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Concluding Remarks

IVGID has not violated any law or acted in any way to harm the public. The Bitterbrush properties were legally acquired. Thereafter, three of the Bitterbrush properties acquired were sold. The Washoe County Assessor label of unbuildable associated with the Bitterbrush properties will remain preserved in perpetuity because the properties in question are unbuildable and have no other value other than the Recreation and Beach privileges associated with them. In addition to the stated public purpose being preserved, IVGID continues to have the ability to serve the important public purpose of recovering delinquent fees and reinstating these properties onto the recreation roll. It has been three years since the last property was sold because IVGID has placed a moratorium on the sale of the properties until a process and procedure for sales is adopted by the Board. Accordingly, IVGID will not sell any of the Bitterbrush properties until an updated policy can be prepared, considered, and approved, in an open publicly noticed meeting, by the IVGID Board of Trustees.

While it is unfortunate that all the forgoing factual information has been ignored by IVGID's critics and was not otherwise included in the media reports, IVGID maintains its commitment to transparency in government. IVGID welcomes any and all questions from the public which can be sent to IVGID at info@ivgid.org or directly to your IVGID District General Manager Steve Pinkerton at sjp@ivgid.org.

CAFR

Depreciation expenses for the year ended June 30, 2013 were charged to functions as follows:

Governmental Activities:

General Government	<u>\$ 78,239</u>
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Business-Type Activities:

Utility Fund Water and Sewer	\$ 2,613,840
Community Services	2,246,216
Beach	<u>117,317</u>
Subtotal – Enterprise Funds	4,977,373
Fleet, Engineering and Buildings	<u>7,926</u>
Total	<u>\$4,985,299</u>

→ In April 2013, the District acquired 87 parcels from Washoe County, which they held in trust following acquisition at a tax forfeiture sale. All parcels are located within the boundaries of the District. The parcels were acquired at no cost, for public purposes and were zoned as unbuildable. The General Fund holds 9 parcels which may be able to be restored to a form that makes them buildable at some point in the future. The remaining 78 parcels are held by the Community Services Fund. They could be sold at some future point because they carry the ability to have recreation privileges while remaining unbuildable.

5. ACCRUED PERSONNEL COSTS

The General Fund processes and pays all payroll and most related personnel and benefit costs for all funds of the District. At the time the expenses are incurred, each fund records its appropriate costs. As payments are made the individual funds record a due to the General Fund. Generally no payroll or personnel accruals are recorded in the individual funds. Accruals for Sick Leave Retirement, Workers Compensation and Vacation can appear in individual funds, because they are recognized well in advance of the payment process. The General Fund also maintains any banks accounts specific for payment of benefits except for those accumulated for Workers Compensation, which has a separate Internal Service Fund.

As a regular course of operations the payroll from June 30 was paid July 12th. The employee benefits earned through June 30 are also funded in the following month. At any given point the District has an obligation to its employees for the value of vacation time earned and not taken. The obligation is measured by the value due as if the employee terminated. The District allows retiring employees with in excess of 20 years of service, and that have accrued sick leave, to have it converted to Medical Retiree Benefit for reimbursing post employment health related costs. The District has no post employment benefit obligations for health insurance.

The District offers health reimbursement accounts (HRA) in exchange for the insured accepting a higher deductible or co-insurance. The Plan is administered by the health insurance carrier. The District also has a third party administered flexible spending account (FSA). The District maintains bank accounts exclusively for reimbursements for HRA and FSA transactions.

The District's Workers Compensation claims are processed by a Third Party Administrator. Claims are paid through a District zero balance account. Checks issued are payables until presented to the bank for payment.

As of June 30, 2013 the Accrued Personnel Costs were comprised of:

	Governmental	Business-type	Total
Current Payroll Liabilities:			
Accrued Payroll	\$ 427,383	\$ 2,591	\$ 429,974
Taxes Withheld	149,017	-	149,017
Accrued Benefits	31,298	3,779	35,077
Deferred Comp	3,315	-	3,315
Pension	19,857	-	19,857
Work Comp Claims	-	69	69
Ongoing Benefit Liabilities:			
Health Reimbursement Accounts	101,337	-	101,337
Sick Leave Retirement Benefit	12,000	160,423	172,423
Workers Comp unpaid losses and expenses	-	323,000	323,000
Accrued Vacation	<u>107,658</u>	<u>302,708</u>	<u>410,366</u>
Total Government-wide	<u>\$851,865</u>	<u>\$792,570</u>	<u>\$1,644,435</u>

CAFR

Depreciation expenses for the year ended June 30, 2014 were charged to functions as follows:

Governmental Activities:

General Government	<u>\$ 78,078</u>
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Business-Type Activities:

Utility Fund Water and Sewer	\$ 2,771,756
Community Services	2,293,786
Beach	<u>137,493</u>
Subtotal – Enterprise Funds	5,203,035
Fleet, Engineering and Buildings	<u>9,950</u>
Total	<u>\$5,212,985</u>

→ In April 2014, the District acquired 4 parcels from Washoe County, which they held in trust following acquisition at a tax forfeiture sale. All parcels are located within the boundaries of the District. The parcels were acquired at no cost, for public purposes and were zoned as unbuildable. These 4 parcels are held by the Community Services Fund. They could be sold at some future point because they carry the ability to have recreation privileges while remaining unbuildable.

5. ACCRUED PERSONNEL COSTS

The General Fund processes and pays all payroll and most related personnel and benefit costs for all funds of the District. At the time the expenses are incurred, each fund records its appropriate costs. As payments are made the individual funds record a due to the General Fund. This process provides the General Fund with the necessary available financial resources to meet these obligations. Generally no payroll or personnel accruals are recorded to the individual funds. Accruals for HRA, Sick Leave Retirement, Workers Compensation and Vacation can appear in individual funds, because they are recognized well in advance of the payment process. The General Fund also maintains any banks accounts specific for payment of benefits except for those accumulated for Workers Compensation, which has a separate Internal Service Fund.

As a regular course of operations the payroll from June 30 was paid July 12th. The employee benefits earned through June 30 are also funded in the following month. At any given point the District has an obligation to its employees for the value of vacation time earned and not taken. The obligation is measured by the value due as if the employee terminated. The District allows retiring employees with in excess of 20 years of service, and that have accrued sick leave, to have it converted to Medical Retiree Benefit for reimbursing post employment health related costs. The District has no post employment benefit obligations for health insurance or retirement benefits.

The District offers health reimbursement accounts (HRA) in exchange for the insured accepting a higher deductible or co-insurance. The Plan is administered by the health insurance carrier. The District also has a third party administered flexible spending account (FSA). The District maintains bank accounts exclusively for reimbursements for HRA and FSA transactions.

The District's Workers Compensation claims are processed by a Third Party Administrator. Claims are paid through a District zero balance account. Checks issued are payables until presented to the bank for payment.

As of June 30, 2014 the Accrued Personnel Costs were comprised of:

	Governmental	Business-type	Total
Current Payroll Liabilities:			
Accrued Payroll	\$288,018	\$ -	\$ 288,018
Taxes Withheld	23,917	- -	23,917
Accrued Benefits	27,630	941	28,571
Deferred Comp	4,192	- -	4,192
Pension	22,441	- -	22,441
Ongoing Benefit Liabilities:			
Health Reimbursement Accounts	32,742	73,489	106,231
Sick Leave Retirement Benefit	12,642	202,154	214,796
Workers Comp unpaid losses and expenses	- -	255,656	255,656
Accrued Vacation	<u>89,542</u>	<u>335,141</u>	<u>424,683</u>
Total Government-wide	<u>\$501,124</u>	<u>\$ 867,381</u>	<u>\$1,368,505</u>

CAFR

The District has a number of Construction in Progress projects open as of June 30, 2015. The General Fund includes an Information Technology Network for \$585,466 that was placed into service July 1, 2015. The Utility Fund includes \$358,762 that is for a water main project that will be completed later in 2015, and \$1,267,970 for the design phase of the Effluent Export Line that will be ongoing through at least 2017. Community Services Fund includes \$235,649 for creek restoration that is grant funded and likely to be completed by mid-2016. The District's primary building season is limited to May to October because of regulations from the Tahoe Regional Planning Agency. Most equipment purchases follow the budget and fiscal year cycle.

Depreciation expenses for the year ended June 30, 2015 were charged to functions as follows:

Governmental Activities:

General Government \$ 81,005

Business-Type Activities:

Utility Fund Water and Sewer	\$ 2,865,958
Community Services	2,342,332
Beach	<u>149,427</u>
Subtotal – Enterprise Funds	5,357,717
Fleet, Engineering and Buildings	<u>10,638</u>
Total	<u>\$5,368,355</u>

→ In April 2015, the District acquired one parcel from Washoe County, which they held in trust following acquisition at a tax forfeiture sale. The parcel is located within the boundaries of the District. The parcel was acquired at no cost, for public purposes. The parcel already has a District utility easement recorded on it. The parcel is held by the Utility Fund.

5. ACCRUED PERSONNEL COSTS

The General Fund processes and pays all payroll and most related personnel and benefit costs for all funds of the District. At the time the expenses are incurred, each fund records its appropriate costs. As payments are made the individual funds record a due to the General Fund. This process provides the General Fund with the necessary available financial resources to meet these obligations. Generally no payroll or personnel accruals are recorded to the individual funds. Accruals for HRA, Sick Leave Retirement, Workers Compensation and Vacation can appear in individual funds, because they are recognized well in advance of the payment process. The General Fund also maintains any bank accounts specific for payment of benefits except for those accumulated for Workers Compensation, which has a separate Internal Service Fund.

As a regular course of operations the payroll from June 30 was paid July 3rd. The employee benefits earned through June 30 are also funded in the following month. At any given point the District has an obligation to its employees for the value of vacation time earned and not taken. The obligation is measured by the value due as if the employee terminated. The District allows retiring employees with in excess of 20 years of service, and that have accrued sick leave, to have it converted to Medical Retiree Benefit for reimbursing post employment health related costs. The District has no post employment benefit obligations for health insurance or retirement benefits.

The District offers health reimbursement accounts (HRA) in exchange for the insured accepting a higher deductible or co-insurance. The Plan is administered by the health insurance carrier. The District also has a third party administered flexible spending account (FSA). The District maintains bank accounts exclusively for reimbursements for HRA and FSA transactions.

The District's Workers Compensation claims are processed by a Third Party Administrator. Claims are paid through a District zero balance account. Checks issued are payables until presented to the bank for payment.

DOCUMENT	PAGE #	LOCATION
Policy 16.1.1 – Recreation Roll Policy	Pages 344 - 345	December 13, 2017 Board Packet
Memo to Board of Trustees – 8/8/2012 Meeting	Page 350	December 13, 2017 Board Packet
Minutes from 8/8/2012 Board of Trustees Meeting	Pages 351 – 352	December 13, 2017 Board Packet
Requesting Letter to Washoe County with parcel listing	Pages 353 - 354	December 13, 2017 Board Packet
Staff Memorandum, Washoe County, September 19, 2012 regarding transfer	Pages 356 - 362	December 13, 2017 Board Packet
Excerpt of Washoe County Board of Commissioners Meeting of October 9, 2012 (12-955)	Page 363	December 13, 2017 Board Packet
Sample of Tax Delinquent Lands Notification Letter from Washoe County	Page 347	December 13, 2017 Board Packet
NRS 361.603	Page 348	December 13, 2017 Board Packet
Documents related to APN # 126-294-29 including sale pricing formula sheet	Pages 388-400	December 13, 2017 Board Packet
Documents related to APN # 126-294-28 including sale pricing formula sheet	Pages 365-386	December 13, 2017 Board Packet
Documents related to APN # 126-294-18 including sale pricing formula sheet	Pages 402-432	December 13, 2017 Board Packet

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 **INCLINE VILLAGE GENERAL**
10 **IMPROVEMENT DISTRICT, a General**
11 **Improvement District,**

12 **Plaintiff/Counter-Defendant,**

13 **v.** Case No.: CV17-00922

14 **GOVERNANCE SCIENCES GROUP,**
15 **INC., a Delaware Corporation; and DOES**
16 **1-50 inclusive,**

17 **Dept. No.: 1**

18 **Defendant/Counter-Claimant.**

19 /

20 **ORDER AFTER HEARING RE: PLAINTIFF'S MOTION FOR PRELIMINARY**
21 **INJUNCTIVE RELIEF**

22 Currently before this Court is Incline Village General Improvement District's ("Plaintiff" or
23 "IVGID") *Motion for Preliminary Injunctive Relief* ("Motion") filed May 12, 2017. Governance
24 Sciences Group, Inc. ("Defendant" or "GSGI") filed the *Opposition* to the Motion on June 23, 2017.
25 IVGID filed the *Reply* on July 5, 2017. The matter was submitted to the Court for consideration on
26 July 5, 2017. On July 6, 2017, this Court issued an *Order to Set* the matter for oral arguments.

27 On December 6, 2017, the parties appeared before this Court for a hearing on the Motion.
28 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 GSGI owns the FlashVote survey service. *Decl. of Kevin Lyons*, Jun. 23, 2017 at 2.
9 FlashVote sends surveys to registered FlashVote users who sign up to take short surveys on issues
10 relevant to their communities. *Opp.* at 2:8. People sign up to join FlashVote by going to
11 www.flashvote.com and submitting personal information to the FlashVote database. *Opp.* at 2:12-13.
12 When people sign up to join FlashVote, they voluntarily provide personal data such as their name,
13 age, gender, as well as contact data such as their email address, a phone number for texts, and a
14 phone number for voice calls. *Opp.* at 2:15-16. This data is submitted to and stored in the FlashVote
15 database. *Opp.* at 2:17-18.

16 In 2013, GSGI approached IVGID to beta test its survey platform services, whereby GSGI
17 would provide services to allow IVGID to send surveys to its customers and GSGI would provide an
18 analysis of those surveys so IVGID could better serve its customers. *Mot.* at Ex. 1:15-20.

19 On March 27, 2015, a "Memorandum of Understanding between Kevin Lyons and IVGID"
20 was executed by the parties, in which they agreed that, among other things, FlashVote would
21 continue to waive its fee for surveys if IVGID aggressively promoted FlashVote to its known parcel
22 owners/residents ("IVGID customers" or "customers") and sent letters at IVGID's expense asking
23 the customers to sign up with FlashVote. *Opp.* at Ex. 2.

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.
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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 Thereafter, in late 2016, the relationship between the parties deteriorated and GSGI terminated the
17 Agreement. *Mot.* at Ex. 1, 2:7-24; see also, *Decl. of Kevin Lyons* at 2:22-24.
18

19 GSGI sent FlashVote surveys on behalf of third parties using IVGID's customers' FlashVote
20 data, stating, "This survey was sent on behalf of the Incline Village General Improvement District"
21 even though they were not. *Mot.* at 4:7-10. GSGI, using IVGID's customers' FlashVote data, has
22 also sent surveys on behalf of other entities such as the Truckee Meadows Regional Planning
23 Agency and on behalf of private individuals. *Mot.* at Ex. 1:17-21; Ex. 4, 7. GSGI has been
24 compensated for doing so. *Hearing Transcript* at 62, Dec. 6, 2017.
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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
money (misdemeanor), what do you think would be the most appropriate
response by the IVGID Board of Trustees?
11

- 12 • Terminate the GM and notify law enforcement
13 • Suspend the GM without pay and launch an investigation
14 • Suspend the GM with pay and launch an investigation
15 • Do nothing
16 • Give the GM a raise
17 • Not Sure

18 *Supp. Decl. of Kevin Lyons*, Ex. 12.

19 In response to this and other similar survey questions, IVGID customers' comments included
20 the following:

- 21 • "This needs to be investigated and prosecuted."
22 • "I can't believe there hasn't been an investigation and arrest already, its
[sic] been 3 months. Lock those scumbags up."
23 • "Fire them."
24 • "Throw the Thugs out of there."
25 *Supp. Decl. of Kevin Lyons*, Ex. 12.

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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).

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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
10 Section 3 of the Agreement, "Confidentiality; Proprietary Rights" defines "Proprietary
11 Information" at subsection 3.1 as "non-public data *provided* by Customer [IVGID] to Company
12 [GSGI] to enable the provision of the Services ("Customer Data") such as non-public citizen email
13 addresses or other non-public data." *Mot.* at Ex. 2. *Emphasis added.* Subsection 3.2 of the
14 Agreement then states that IVGID "shall own all right title and interest in and to the Customer
15 Data." *Mot.* at Ex. 2.

16
17 IVGID argues that subsequent to the termination of the Agreement, GSGI continued to use
18 IVGID's customer data without IVGID's permission by sending surveys not only to IVGID
19 customers, alleging they were being sent by IVGID, but to IVGID customers on behalf of third party
20 entities such as the Truckee Meadows Regional Planning Agency. *Mot.* at 4:7-10; 5:4-12; 6:19-21.
21 Furthermore, IVGID argues it has an obligation to protect the personal information of its customers,
22 and to stop others from distributing such information in IVGID's name. *Mot.* at 7:3-9. IVGID asserts
23 that it is at risk of irreparable injury, as it is opened up to potential liabilities because GSGI is using
24 IVGID's customer information without IVGID's permission, and distributing information to
25 IVGID's customers. *Mot.* at 7:3-9.

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.
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11 *Hearing Transcript* at 71.

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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.

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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.

10
11 C. Court’s Findings
12

13 1. *Likelihood of Success on the Merits*

14 This Court must first determine the likelihood of Plaintiff’s success on the merits.

15 First, this Court takes issue with GSGI’s assertion that the Memorandum of Understanding
16 clearly assigns ownership of the “database of registered users” to GSGI. The Memorandum of
17 Understanding (executed March 27, 2015) appears to be superseded by the May 10, 2016
18 Agreement. Section 9 of the Agreement, “Miscellaneous” clearly states, “This Agreement is the
19 complete and exclusive statement of the mutual understanding of the parties and supersedes and
20 cancels all previous written and oral agreements, communications and other understandings relating
21 to the subject matter of this Agreement, and all waivers and modifications must be in writing signed
22 by both parties, except as otherwise provided herein.” *Mot.* at Ex. 3:4. *Emphasis added.* Therefore,
23 there is a reasonable probability that the Agreement entered into between the parties is controlling
24 despite the March 25, 2015 Memorandum of Understanding.

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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.”

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., Inc., 129 Nev. Adv. Op. 49, 306 P.3d 360, 364 (2013). If this Court were to accept GSGI’s
24 interpretation of subsection 3.1 of the Agreement, the provisions that define Customer Data would
25 arguably be rendered meaningless. In spite of the fact that the parties contemplated that IVGID
26 would “provide” the Customer Data as evidenced by the Agreement, GSGI contends that under the
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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 Subsection 3.2 of the Agreement, states that IVGID "shall own all right title and interest in
15 and to the Customer Data." While this subsection also addresses GSGI's ownership rights, these
16 rights pertain to the Services, Software and Implementation Services. The Agreement defines
17 Services as "the Standard Tier of FlashVote services...a program of up to 12 monthly Stock
18 FlashVote Surveys and up to 6 Custom FlashVote Surveys...." The Agreement defines Software as
19 "the source code, object code, underlying structure, ideas, know-how or algorithms relevant to the
20 Services or any software, documentation or data related to the Services." Finally, Implementation
21 Services are defined as GSGI's obligation to use "commercially reasonable efforts to provide
22 Customer [IVGID] the services described in the Statement of Work. None of these appear to pertain
23 to or confirm an ownership in the Customer Data. Accordingly, this Court finds that IVGID has
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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 According to the above analysis, this Court finds that IVGID has proven a likelihood of
19 success on the merits on its claims for declaratory and injunctive relief.
20

21 2. *Irreparable Harm*
22

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
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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.

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 Having reviewed the record and having heard the parties' arguments, this Court rejects
17 GSGI's contention that this is just a case of the citizenry speaking out against its government since
18 this is not the focus of the inquiry that this Court must make. This Court must focus on whether
19 IVGID has made the requisite showing of irreparable harm and inadequacy of legal remedies.

21 This Court finds that IVGID has made the requisite showing of irreparable harm and
22 inadequacy of legal remedies permitting this Court to grant injunctive relief pursuant to NRS
23 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

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.
7

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

14 IT IS HEREBY FURTHER ORDERED that IVGID is exempt from posting a security bond
15 as an agency under NRCP 65(c).

16 DATED this 10th day of January, 2018.

17 
18 KATHLEEN M. DRAKULICH
19 District Judge
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1
2 **CERTIFICATE OF MAILING**
3

4 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
5 STATE OF NEVADA, COUNTY OF WASHOE; that on the 10th day of January, 2018, I did
6 the following:

7 Electronically filed with the Clerk of the Court, using the eFlex system which
8 constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

9 RICHARD J. MCGUFFIN, ESQ.

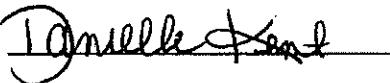
10 RYAN W. HERRICK, ESQ.

11 JASON D. GUINASSO, ESQ.

12 DEVON T. REESE, ESQ.

13 Transmitted document to the Second Judicial District Court mailing system in a sealed
14 envelope for postage and mailing by Washoe County using the United States Postal Service in
15 Reno, Nevada:

16 NONE

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IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON L. KATZ,
Appellant,
vs.
INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT,
Respondent.

No. 70440

FILED

JAN 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER SUBMITTING FOR DECISION
WITHOUT ORAL ARGUMENT*

Oral argument will not be scheduled in this matter, and it shall stand submitted on the record and the briefs filed herein, as of the date of this order. NRAP 34(f). It is so ORDERED.

Cherry, A.C.J.

cc: Richard F. Cornell
Erickson Thorpe & Swainston, Ltd.

ADAM PAUL LAXALT
Attorney General



J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

January 4, 2018

Via U.S. Mail

Frank Wright
Post Office Box 186
Crystal Bay, Nevada 89402

Re: Open Meeting Law Complaints, O.A.G. File Nos. 13897-242; 13897-244; 13897-245 Incline Village General Improvement District

Dear Mr. Wright:

The Office of the Attorney General (OAG) is in receipt of your complaints alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) regarding alleged cover-ups of illegal behavior by IVGID's former legal counsel (13897-242), regarding your exclusion from an OML training (13897-244), and regarding your requests for Board records (13897-245). I have been assigned to examine these complaints.

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. In response to your complaints, the OAG interviewed Sarah Bradley of the OAG concerning the Board training she conducted on September 6, 2017, and reviewed your complaints and attachments; the agendas, meeting materials, and video from the Board's July 20, 2017, meeting; the agendas, meeting materials, and video from the Board's September 13, 2017, meeting; the agendas, meeting materials, and video from IVGID's August 22, 2017, meeting; and OML training materials from the OML training of the Board.

FILE NO. 13897-242

Factual Background

The Board is a "public body" as defined in NRS 241.015(4) and subject to the OML.

Frank Wright
Page 2
January 4, 2018

The allegation of the complaint is, during its September 22, 2017, meeting, the Board “is passing legislation to cover up illegal behavior by legal counsel Jason Guinasso.” The complaint refers to agenda item I(1)(a) of the Board’s August 22, 2017, meeting. The complaint alleges Mr. Guinasso will be able to claim the Board gave him “authority to secretly respond to OMLs.”

Agenda item I(1)(a) was noticed for District General Counsel Jason Guinasso to “[v]erbally review the process of responding to an Open Meeting Law Complaint” with the Board. This agenda item was not designated as “for possible action.” The supporting materials for this agenda item included pages 91-93 of the OAG’s OML Manual. These pages concern complaints filed against a public body.

At the August 22, 2017, meeting, Mr. Guinasso made a presentation to the Board concerning how an OML complaint moves through the OAG. Mr. Guinasso also described his actions with regard to an OML complaint, including what information he shares with the Board and when he shares the information. The Board did not collectively or individually grant to or withhold from Mr. Guinasso any authority with regard to responding to OML complaints. Mr. Guinasso did not request such authority.

Discussion and Legal Analysis

Your complaint alleges the Board took action to give Mr. Guinasso the power to respond to OML complaints in secret. Chapter 241 of the Nevada Revised Statutes requires 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). Action means a decision, commitment, or affirmative vote. NRS 241.015(1). Mr. Guinasso made his presentation to the Board and stated how he dealt with and responded to OML complaints. Mr. Guinasso did not give the Board the opportunity to decide how he responds to OML complaints. In fact, Mr. Guinasso stated he could not share his responses to OML complaints with the Board while the investigation of the OML complaint was on-going.¹ The Board did not take any action to grant Mr. Guinasso the authority to respond to OML complaints in secret. The item with which your complaint was concerned was not designated as “for possible action,” and the Board did not take any action. Thus, the OAG does not find an OML violation for file No. 13897-242.

¹ While the OAG will keep responses to OML complaints confidential during an on-going investigation, a response submitted to the OAG on behalf of a public body by its attorney should not be kept from the public body by its attorney.

Frank Wright
Page 3
January 4, 2018

FILE NO. 13897-244

Factual Background

The Board is a “public body” as defined in NRS 241.015(4) and subject to the OML.

On September 6, 2017, Sarah Bradley of the OAG conducted an OML training for the Board. This training was not agendized as a meeting of the Board. No items over which the Board has supervision, control, jurisdiction, or advisory power were discussed or acted upon before, at, or after the training. At least three members of the public attended this training. During the training, you were warned concerning being disruptive. The Board’s attorney contacted the Washoe County Sheriff’s Office and alleged you were being disruptive. At least one deputy sheriff responded. However, you were not actually removed from the training and proceeded to ask Ms. Bradley questions during and after the training.

Discussion and Legal Analysis

Your complaint alleges your removal and exclusion from the OML training violated the OML. Chapter 241 of the Nevada Revised Statutes requires 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). “Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies.” NRS 241.020(1). However, a person may be removed from a meeting if the person is willfully disruptive “to the extent that [the meeting’s] orderly conduct is made impractical.” NRS 241.030(4). A meeting is the gathering of the members of a public body “to deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(3). The purpose of the training was to inform the Board concerning the OML. The Board did not deliberate toward a decision, take action, or even discuss anything over which it has supervision, control, jurisdiction, or advisory power at the training. Thus, the training was not a meeting under the OML. Additionally, though not necessary, it appears the Board’s attorney was taking steps to remove you pursuant to NRS 241.030(4), even though you were not actually removed.

FILE NO. 13897-245

Factual Background

The Board is a “public body” as defined in NRS 241.015(4) and subject to the OML. In your complaint for file No. 13897-245, you state the Board has not complied with your public records request.

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Discussion and Legal Analysis

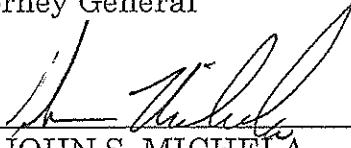
In your complaint, you state the Board has not complied with your public records request. The OML is found in Chapter 241 of the Nevada Revised Statutes. OML grants the OAG certain powers to investigate and make determinations with regard to alleged OML violations. Public records law is found in Chapter 239 of the Nevada Revised Statutes. Chapter 239 does not grant the OAG any powers with regard to alleged public records violations. The remedy available on an alleged public record violation is an application for an order from a district court. NRS 239.011. Thus, file No. 13897-245 does not contain an alleged OML violation.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close these files.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division

JSM:arz
cc: Jason D. Guinasso, Counsel
Kendra Wong, Chairperson, Incline Village General Improvement District
Board of Trustees