MINUTES

REGULAR MEETING OF FEBRUARY 6, 2019
Incline Village General Improvement District

The regular meeting of the Board of Trustees of the Incline Village General Improvement District was called to order by Chairwoman Kendra Wong on Wednesday, February 6, 2019 at 6:00 p.m. at the Chateau located at 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

The pledge of allegiance was recited.

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

On roll call, present were Trustees Peter Morris, Matthew Dent, Tim Callicrate (on the telephone), Phil Horan, and Kendra Wong.

Also present were District Staff Members Director of Finance Gerry Eick, Director of Parks and Recreation Indra Winquest, Director of Public Works Joe Pomroy, Director of Human Resources Dee Carey, Diamond Peak Ski Resort General Manager Mike Bandelin, Principal Engineer Charley Miller, and Communications Coordinator Misty Moga.

Members of the public present were Jacquie Chandler, Michael Brothers, Wayne Ford, Pete Todoroff, Gene Brockman, Sara Schmitz, Steve Price, Linda Newman, Kevin Lyons, Aaron Katz, Mike Abel, Judith Miller, Jack Dalton, Steve Dolan, Denise Cash, and others.

(44 individuals in attendance at the start of the meeting which includes Trustees, Staff, and members of the public.)

C. PUBLIC COMMENTS*

Judith Miller said she has a couple of things; it was quite an extensive Board packet to get through but she did hit the part with the most recent Open Meeting Law (OML) violation. It was kind of interesting how the agenda was formed this time because when there is no violation it is in bold 50 point print but when there is a violation, it is in the tiniest print and it doesn’t in fact say there was a violation rather it just says we had to post this because the AG said so; this is one of the things she took note of. Another thing was some of the correspondence between District General Counsel and Ms. Bateman was rather inappropriate. He talked about a
Minutes
Meeting of February 6, 2019
Page 2

group that had this political agenda. If asking for public records and having them denied - is that a political agenda. Having agendas that aren’t clear and complete is that considered some form of political agenda. If we have budgets that are not meaningful and don’t us if our venues are scheduled to take a great deal of supplements or if they are not standing on their own – is that a political agenda. If we have rates that are not equitable because they give tremendous benefits to certain recreation venues where the ordinary citizen pays a much higher rate if he uses a certain amount of water. If we have minutes that are unintelligible and bias - is that a political agenda. Anyway, she is bringing that up today as she thinks the Board should have received her e-mail regarding this month’s minutes from the January 23rd meeting and noted that this has happened over and over and over. The comments are misconstrued and she cannot help but believe that it is an intentional thing when it happens with this frequency. She knows that the Board Clerk is capable of making these minutes very concise and accurate but it seems that certain individuals’ comments are totally convoluted and it makes it look like we haven’t said anything substantial.

Aaron Katz said this agenda is so long it pleads for a policy on public comments, as there is not enough time. Consent Calendar Item F.1.b. — hearing, he sent an e-mail to all of the Board and asked to get it off of Consent Calendar as Staff hasn’t qualified for a justification. Staff doesn’t tell you the AWWA standards that were incorporated because Staff hasn’t incorporated what AWWA said. Mr. Katz continued that he offered to do a hearing if the Board will give him the same amount of time because the rates are not fair, are unjust, and preferential and if you don’t know what AWWA says, you have no business establishing rates. General Business Item G.4.; by the way, your crack Staff and Counsel, in labelling this, didn’t comply with the OML again so yes, he will be filing another complaint. Why is he [District General Counsel] recommending filing a lawsuit; Staff says it is only academic, didn’t get hit with any penalties, so why would the Board want do a worthless lawsuit. There is no legal standing to do a lawsuit and if this gets thrown out of court, the District should look in to malpractice. One hundred and forty four thousand dollars for District General Counsel - why not hire a full time attorney for that money. He says the community is hostile and disgruntled, well, he is not here to take sides rather he is here to practice law.

Mike Abel read from a prepared statement which was submitted.

Sara Schmitz said some of what she is going to talk about, Mr. Abel covered. Ms. Schmitz read from a prepared statement which was submitted.

Linda Newman read from a prepared statement which was submitted.
Minutes
Meeting of February 6, 2019
Page 3

Daniel Stewart said that it was good to be a law partner of District General Counsel and that about a year ago his firm merged and it has been a very good marriage as he has enjoyed working with District General Counsel. Background about him is that this District is not just getting District General Counsel but everyone at the firm to help whenever they can. His family was kicked out of Utah, landed in Nevada, his father attended kindergarten here, family members are in Northern Nevada, and he can’t imagine living anywhere else but Nevada. He has spent the last five to six years working in and out of public agencies and mostly recently working with Governor Sandoval. He has also worked with private clients such as the City of Mesquite, Valley Electric Association — Nye County rural co-op — advised elected board, City of Henderson, North Las Vegas, as well as others. We are the fifth biggest firm in the state and we are very excited about working with Incline Village, as this is interesting and important work upon which we can make a difference and serve you well.

Pete Todoroff said a couple of things — one of the things he noticed is the easement for NVEnergy and while he doesn’t have a television he does have a computer that gets him the news. Some casinos in Reno have decided to get their energy from a firm in Texas because NVEnergy has been remiss about getting power to this community with the last outage being for eight hours. He had to take a nap on his sofa with his parka because it was so cold. There has been one hundred and sixty hours in the last three years that NVEnergy hasn’t provided power to this community. Sheriff Ballam is going to be attending a dinner meeting at Crosby’s, and since we need a place for a Sheriff’s boat, he is going and if anyone else would like to come to the meeting, you need to contact Mr. Clark and pay $25. It is a worthwhile meeting to attend and he will be there.

John Steffen said they appreciate the opportunity to come and speak and expressed his appreciation for the recommendation. Mr. Steffen said, as a little history of the firm, that he is a co-founder and that the firm was founded in 1996 with Mark Hutchison. Both of them were with a different firm in town, decided to start a firm so they took out personal loans as they wanted to start a firm that provided highest legal expertise at reasonable rates and this is still what they believe in today. As time passed, they kept adding to the team and today the firm is at forty five attorneys. They have members in high ranking positions such as the Supreme Court. Many of their team members help the poor and the needy which is one of the best achievements. The firm focuses a lot of time in doing pro bono work for people who can’t afford it and the firm handles every aspect except criminal. It is a pleasure to be before the Board tonight and he is happy to answer any questions.
Andy Wolf said he is the President of DPSEF, a Masters member of the ski team, and he has a son on the team. He has the privilege of being on the DPSEF Board and is currently leading that Board. He wanted to take the time to thank Staff and the DPSR Staff for all their efforts. We had U14 qualifier race in January which involved U14 athletes and all feedback was really excellent from both parents and coaches; we had great representation from all aspects. There was incremental income to the District in food and beverage. The following weekend, we had Ultr Fest. There was a great turnout from the community with a few hundred people in the bar listening to the band and then more at the bonfire. Thank everyone top to bottom for doing these events. His Board is all volunteer and in every interaction he has with IVGID employees there is this great culture of customer service. This culture is evident when he is doing a drop off at the dump or stopping by hazardous waste. It emulates from the lowest level to the highest level and he is always met with professionalism and care and if one wants to talk, they will chat. If one would rather get their business done quickly, they do that as well. This is a great reflection on the District; thank you.

Kevin Lyons said he is President of GSGI and that there are a couple of things he found interesting on an agenda item and that was that there was no acknowledgement of a conclusion so this is not a valid agenda. The District is supposed to that at its next meeting and he thinks that the findings were delayed while District General Counsel’s buddy was the Attorney General. The GSGI settlement agreement has been violated by Chairwoman Wong and he notified the Board but he hasn’t heard anything. He also notified District General Counsel of this violation as well as concealment of public records which is a crime. He does a lot of training for elected officials and Staff and what he has here is handcuffs and he asked if he had the Board’s attention; Mr. Lyons then read aloud from Nevada Revised Statutes Chapter 195 entitled Parties to Crimes which he distributed prior to the start of his public comments. It is his understanding that there is civil action pending, one criminal complaint, and several bar complaints.

Steve Dolan said he wasn’t planning on saying anything but for two and a half years he has e-mailed and cautioned about lawsuits that are occurring under District General Counsel’s tenure and that they have happened/occurred and this was just based on what he thought would happen. The frivolous lawsuit with Mr. Lyons happened and it was a bad outcome for Incline Village. There has been wrong advice given to you regarding public comment and his attempts to speak where you were advised that you couldn’t allow him to speak which was reversed at the next meeting. Obviously, this is bad advice that has been going on with
District General Counsel personally and it is prevalent and ongoing so please do not renew his contract.

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

Chairwoman Wong asked for changes to the agenda; Chairwoman Wong noted that she is removing Report Item E.1. and General Business Item G.1. as the presenters are not here tonight.

Trustee Callicrate said, regarding the Consent Calendar, that he would like to move the public hearing on utility rates to General Business Item G.1. and that he is concerned about the hiring of the recommended law firm, he would like to look at a couple of firms that were interested, and that what we have before us is stuff that was skipped over. He is a little leery of this item going forward tonight. Chairwoman Wong said that the Board can have that discussion during General Business Item G.3. and if we are not ready, we can table it and bring it back at another time. Trustee Callicrate said that is a good step.

Chairwoman Wong said so we are moving Consent Calendar Items F.1.a. and F.1.b. to General Business Item G.1.

Trustee Dent asked that General Business Item G.4. be moved up in front of General Business Item G.3.

Hearing no further changes, Chairwoman Wong approved the agenda as revised.

E. **REPORTS TO THE BOARD OF TRUSTEES**

E.1. Verbal presentation by representative(s) from Tahoe Prosperity Center - **REMOVED FROM THIS AGENDA IN ITS ENTIRETY**

E.2. Verbal presentation by representative(s) from North Lake Tahoe Fire Protection District (NLTFPD)

NLTFPD Chief Ryan Sommers gave a presentation on ISO Class 1 community which is incorporated herewith by reference.

Chairwoman Wong congratulated the NLTFPD team as this is a huge recognition and asked if community members needs to reach out to their insurance companies. NLTFPD Chief Sommers said if their companies subscribe to ISO he would recommend that homeowners follow up with their respective agents.
Trustee Morris said compliments to you and your team and as someone who has been through the ISO process, congratulations to you and your team for all your hard work.

F. **CONSENT CALENDAR (for possible action)**

1. Review, discuss, and possibly set the dates for the public hearings on the following matters:

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

   b. Review, discuss and possibly set the date/time for April 10, 2019 at 6:00 p.m. for the public hearing on the proposed amendments to Sewer Ordinance #2 “An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District” and Water Ordinance #4 “An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District” that includes the Utility Rate Increase

**CONSENT CALENDAR ITEMS F.1.a. AND F.1. b WERE BOTH MOVED TO GENERAL BUSINESS ITEM G.0.**

2. Review, discuss, and possibly approve a Grant of Easement to NV Energy on District Property APN: 128-352-01 (687 Wilson Way) for the Purposes of Constructing, Operating, Adding to, Modifying, Removing, Accessing and Maintaining Above and Below Ground Communication Facilities and Electric Line Systems (Requesting Staff Member: Director of Public Works Joe Pomroy)

Trustee Horan made a motion to approve the Consent Calendar. Trustee Morris seconded the motion. Chairwoman Wong asked if there were any comments, receiving none, she called the question and the motion was passed unanimously.

Chairwoman Wong called for a quick break at 6:47 p.m.; the Board reconvened at 6:56 p.m.
G. **GENERAL BUSINESS (for possible action)**

1. Review, discuss, and possibly set the dates for the public hearings on the following matters:
   
a. Review, discuss, and possibly set Date and Time for Public Hearing for the 2019/2020 Budget and Recreation Roll for Wednesday, May 22, 2019, 6:00 p.m. *(was Consent Calendar Item F.1.a)*

b. Review, discuss and possibly set the date/time for April 10, 2019 at 6:00 p.m. for the public hearing on the proposed amendments to Sewer Ordinance #2 “An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District” and Water Ordinance #4 “An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District” that Includes the Utility Rate Increase *(was Consent Calendar Item F.1.b)*

District General Manager Pinkerton said that these two items are wholly separate issues and that G.1.a. is about setting the date of the consistent with the Department of Taxation guidelines. These are two separate issues that will require two separate motions.

Director of Finance Eick gave a brief review of the submitted memorandum. Chairwoman Wong asked Trustee Callicrate what his issues were as he is the one who made this request. Trustee Callicrate said he didn’t have an issue with G.1.a. as that date is fine; he just wanted to move G.1.b. as he has no issue with G.1.a.

Trustee Dent asked if we needed a motion for part a.; Chairwoman Wong said yes, that is correct.

Trustee Horan made a motion to set the date of a public hearing for the 2019/2020 Budget and Recreation Roll for Wednesday, May 22, 2019 under the Nevada Revised Statues. The time of the meeting is expected be 6:00 p.m. Trustee Callicrate seconded the motion. Chairwoman Wong asked for comments, receiving none, Chairwoman Wong called the question and the motion was passed unanimously.
Trustee Callicrate said on G.1.b., and this was brought up before, are the balances in compliance with Policies/Practices 19.1.0 and 19.2.0 and that Policy 7.1.0 actually is for Community Services and Parks and Recreation and not Utilities. His concern is we have two conflicting documents - Board Policy 19.1.0 and Board Practice 19.2.0 and that if we do that then we don’t have enough money in our accumulated resources. He would like some explanation as this is dangerous territory for accumulated resources. After that he would like to go to Practice 19.2.0 and look at the three paragraphs on agenda packet page 10 which don’t adequately describe and define.

Director of Finance Gerry Eick said that he would like to remind everyone that we have two policies – one is fund balance and the other is about working capital which are two very different things. Historically, the utility rate study uses the term “reserve” meaning fund balance. We have twenty five percent of the year’s expenditures for the Utility Fund, other than depreciation, which is where the $1.9 million dollars comes from. In the District’s Audit Report, fund balance is net position. Staff does acknowledge that there are potentially three different terms that is the same number – reserve, fund balance, or net position. The policy is very clear on having $1.88 million dollars and the District has over $10 million dollars according to the last audit. For working capital, as it is defined by accounting principles, the policy about that provides for three elements which are at the top of the page 11. The amounts should be $3.9 million dollars to $4.8 million dollars and the District has $6.1 million dollars as stated on page 11. Staff does recognize that the terminology could be confusing however the District is well in excess of both policies.

Trustee Callicrate said it is his recollection that 19.1.0 and 19.2.0 were kind of standalones for the Utility Fund up until 2015. Policy 7.1.0 seemed to muddy the water and he does appreciate the explanation. We have to be consistent with what we are discussing and he apologizes for not being at the last meeting. The calculation that Trustee Dent asked for, he doesn’t know if that was provided. He would like to hear from Trustee Dent as to what his concerns were, were they answered, or is the calculation forthcoming.

Trustee Dent said he would like a little clarification; agenda packet page 10, third paragraph, reserve balance is net position. Director of Finance Eick said yes. Trustee Dent said for the fourth paragraph, there is no definition so does that mean net position as well. Director of Finance Eick said that
reserve is an old, old term and that the new term is net position. Trustee Dent said on page 11 it shows $6.129 million dollars for the working capital which is part 1; where is part 2. Director of Finance Eick asked what part 2 was. Trustee Dent said 19.2, the practice. Director of Finance Eick said that is 19.2 as 19.1 says to have working capital computation and 19.2 sets those perimeters. Trustee Dent says it shows $1.284 million dollars so where is the accumulated multi-year capital money. Director of Finance Eick said it is in the current assets as well as there is $4 million dollars in non-current assets. Trustee Dent said so does the current assets include the $1.692 million dollars. Director of Finance Eick said a portion of it is. Trustee Dent said that his calculations produce a negative $4.697 million dollars in the Utility Fund. Director of Finance Eick said he can't agree with the math because of the definition which doesn't speak to it. It is why we have the policy or practice as it does acknowledge accumulation of resources but doesn't eliminate. We can change the definitions but right now it isn't matching rather it is apples to oranges. Trustee Dent said we have a $9.7 million dollar commitment that we are using to pay as we go for operating expenses so we don't have the money because Staff is using it for other things. Chairwoman Wong said let's back up – number 1, this was setting a threshold of working capital, etc. at a point in time. The current assets and current liabilities are also at a point in time. Operations are continuous so it doesn't pick up revenues and expenditures. These measurements are because we want to make sure the financial position in the Utility Fund is to be solvent and is based on our projections so we have it. This is not to say we have $4 million dollars in cash today because it is not meant to be that rather the measurement we are using to say we have a solvent Utility Fund.

Trustee Callicrate said we have a set aside of $2 million dollars that we are collecting for the effluent pipeline. Those reserves are accumulating and have been designated and we have that collection which has not been fluctuating but we have been borrowing from that with the relief values that we had to replace as those could have created a catastrophe for the pipeline. We have an unlined pond that is being worked on and it has to be addressed. We seem to always be operating in emergency mode and we have to be careful on how we are utilizing this money. The budgeted money versus the estimates are grossly out of line as we are looking at a couple of million dollars more which means we are going deeper underwater. His concern is with the terminology and the two policies as well as calling the project by two names so he would like to take a step back and really access what we need such as raising rates by 10 or 12 percent. He also has concerns with the
money being collected and how it has been set aside. We need to have a discussion, because of what has happened over the years, about our controls and mechanisms. It is confusing to him as well as a couple of dozen people in the community. He is still having an issue with capital accumulation of money, carryover, what to do right away, and the replacement of the pipeline on which we are dangerously shy of what we should have. He would like to have a good collegiate discussion in the near to mid distance and that is why he is asking questions. Chairwoman Wong said it could be valuable to go back and look at the presentation from the last meeting. Trustee Callicrate said he did go through that and he is not faulting anyone but with the interchanging of the terminology, we need to come to some agreement about we are calling it. Effluent goes strictly to that unless we make an amendment. We have lurched from one emergency to another and things can get lost and change the whole mindset. The District is being very proactive but we need to be better on how we are moving forward as it is very confusing and there are areas where the community thinks we have the money and are moving forward but we don’t have enough reserves to take care of this and that is how he feels and that is where he is coming from. This is not a got you rather he is trying to understand a shifting target of the effluent pipeline and the effluent project. We need to be better in our definition and all call it the same things.

Chairwoman Wong said she would like to get back on track because the agenda item is about the hearing and this Board will have several more opportunities to discuss this matter. District General Manager Pinkerton added that the Board will get another bite at the apple in March and then talk more about it in April at the hearing and that Staff has been clear about moving forward on this project. On the long range calendar, we have been announcing that we see some money coming in from the U.S. Army Corp of Engineers so there are a lot of unknowns but that we have a good idea about the upper end of this project. If you want to decide to have one hundred percent of the money set aside, then Staff can do a series of forty percent increases. Staff has been prudent in what we charge as we go forward in our due diligence and Staff mentioned they will have a better idea in the fall. Staff has tried to be very cautious and prudent and coming back with a philosophy about costs. In having all the money, our sewer rates would be fifty to one hundred percent higher. Is it more responsible to have enough money and be responsible to the plan we have; this year it will be much clearer and remember this is not a onetime project. Even if the District was told to start this project tomorrow, there would be a three year ramp up. We are doing our due diligence to minimize costs of the project and minimize
the cost to the ratepayers. We are meeting all the required accounting standards while being prudent.

Trustee Callicrate said he is not trying to create an issue but on the terminology, we have three different terms for the same thing. We have collected money from our taxpayers in our community and that is $2 million dollars each year and we have had to use some of that money for other emergencies. We don’t know what the final cost is, $23 million dollars right now, but it keeps going up and up and if we don’t know the cost then it isn’t prudent to do a rate study on something that we don’t know what it is going to cost. It doesn’t jive as well as it could. He has expressed his concerns and if we set a time specific public hearing for April 10 and the four percent has raised a lot of eyebrows. He has answered to the people who elected him who have asked him what we are trying to pull and that resulted in unfair comments towards him so he is trying to ask specific questions because that is very important. People know that they are being charged fifty dollars per month which is a lot of money that is being collect and they want to know where it is going. The District has had some grossly out of line estimates by our engineers and we have continually raised our rates by four percent every year so it is time to start looking at our District and what the true costs are and have a far more accurate picture for the community because it exceeds our estimates. There are a lot of people who have been paid a lot of money and do a tremendous job so please know that he is raising this issue in an effort to try and find out the fact.

Trustee Morris said he feels like one moment Trustee Callicrate says that Staff does a tremendous job and then something else the next moment. Trustee Callicrate said he didn’t mean to imply that. Trustee Morris said he accepts what you are saying but understand that it is hard to deal with. Trustee Morris than thanked the team for doing a tremendous job and that he doesn’t honestly know what other analysis they would do to come up with some other recommendation towards what Trustee Callicrate is thinking. He would urge Trustee Callicrate to check with District General Manager Pinkerton and have everyone understand that the Board will have an opportunity to still review this and that this is not our final say as it can still be addressed. District General Manager Pinkerton said that is correct and that the Board has the ultimate authority to choose the rate. Trustee Morris said he does agree about terminology and that he thinks he has evolved to be inclusive of what we do; effluent export pipeline is a good term to use. The Board should agree on what term to use so we can always be on the same page. He wondered if Trustee Callicrate would work with the team to
come back and tell us what the numbers should be and come back to the Board and say the numbers are X and the increase to utility rate should be Y. Trustee Morris continued that he has spent the time to go through the numbers and he is really happy with the result. Trustee Callicrate said he would be amenable to doing something like that as he is trying to achieve success. Further, his blunt speaking isn’t meant as personal as he is looking at the dollars and cents and his frustration is with not having enough money to do all we want to do. He will work with the District General Manager upon his return and there needs to be another discussion, maybe that can occur at the March meeting, as he doesn’t want to get against the wire and have a vote’ he doesn’t want that pressure because it creates tension where it doesn’t need to be. He appreciates Trustee Morris’ comments and to the District General Manager, he is sorry to bark at him but let’s bring this back in March and set the hearing date at that time; he doesn’t want to be pushed against the wall.

Chairwoman Wong asked District General Manager Pinkerton to agendize another discussion for the next meeting and for Trustee Callicrate to meet with our Staff. District General Manager Pinkerton said we need to go to March meeting. Chairwoman Wong said she is okay with March and asked Trustee Callicrate to meet with Staff and come up with a format. Director of Finance Eick added that it would be March 18 to talk about this. Chairwoman Wong asked this to be put on the agenda for March 13. Trustee Callicrate said so this item is not about establishing the date rather just the hearing date and noted that it is critically important to get this figured out and asked that Staff reach out to him and do so well in advance of the April meeting. Chairwoman Wong confirmed that this action is just to set the hearing date and is not deciding the rates or anything else. Trustee Callicrate said okay.

Trustee Dent said he had no more questions but that he would like to see a calculation that is in compliance with 19.1.0 and 19.2.0 and that he asked for it at the last meeting, he doesn’t have it and the District doesn’t have adequate reserves.

Trustee Morris said he apologizes in advance for his confusion but that he thought Staff went through that and that is what is on agenda packet page 11 so is there some other calculation. Director of Finance Eick said that the calculation that appears in the packet is for Practice 19.2.0 and that practice is the one that supports Policy 19.1.0. For the fund balance, or 7.1.0, that is exactly the calculation that is there. Trustee Dent said it is 19.2.0 and the compliance that he wants to see; Director of Finance Eick said that is it.
Chairwoman Wong asked that Trustee Dent sit down with Director of Finance Eick and have him walk you through the information. Trustee Dent said that is fine but that the District still has a $5 million dollar shortfall.

Chairwoman Wong asked for any other questions or comments about the hearing date; hearing none, she asked for a motion.

Trustee Morris made a motion to set the date/time of April 10, 2019 at 6:00 p.m. for a public hearing for the proposed amendments to IVGID Sewer Ordinance No. 2, entitled “An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District” and IVGID Water Ordinance No. 4, entitled “An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District”. Trustee Horan seconded the motion.

Chairwoman Wong asked for any further comments.

Trustee Dent said he will be voting no on this motion because we are not following 19.1.0 and 19.2 and that 7.1.0 was slipped in here but it doesn’t apply because this is an enterprise fund.

Hearing no further comments, Chairwoman Wong called the question – Trustee Dent and Callicrate voted opposed and Trustee Horan, Morris, and Wong voted in favor – the motion passed.

G.1. Review, discuss, and possibly provide input and guidance on legislative matters for the 2019 State of Nevada Legislative Session following a verbal presentation on legislative matter provided by Tri-Strategies representative(s) – REMOVED FROM THIS AGENDA IN ITS ENTIRETY

G.2. Review, discuss, comment and possibly adopt a Popular Report format under 2018 Board Work Plan (Requesting Staff Member: Director of Finance Gerry Eick)

Director of Finance Eick gave a brief overview of the submitted report.

Trustee Morris said thank you and that he continues to like all that Staff is trying to do. He would draw attention to the bar charts as he worries a little
that in trying to get everything together, we now have got too much. It is a little tough to see this and he understands what it is trying to accomplish but perhaps it would be better to split into two.

Director of Finance Eick said that Staff did a lot of work on this and that he wanted to present the work as a next step from what we had in December, the intent was not to be busy, and that he acknowledges it is better to split this. Agenda packet page 17, the items that are shaded in blue, are a subset to the numbers on the left so those could naturally be turned into two pages. Trustee Morris said that he appreciates that and the goal and intent; he is a voice of one who appreciates that.

Trustee Dent asked if this was just for the Quarterly. Director of Finance Eick said it is just a sample of what we have done. This is not in accordance with any standards and is our own format that is based on audit report and that Staff is not creating a different set of records. We talked about this in December, Staff hadn’t shown you the prior year but it is important to get the detail behind it.

Trustee Callicrate said thanks and to Trustee Morris’ point, there is a lot of information and it is a bit alarming so splitting the page makes better sense. It is a lot to absorb and is a great opportunity to move forward. Thank you and the team for the hard work. He is not a numbers person but he does tend to like what Staff has done while he knows there is more tweaking to be done. Understands that this is IVGID formatting that does make some things much clearer.

Chairwoman Wong said that she really likes where this has come along to and one suggestion she has is on agenda packet page 17 and that is to flip that entire chart so when one is reading it, it follows agendas packet pages 19 and 21. On the graphics. Staff did an amazing job with consistency so kudos to them. Director of Finance Eick said Staff did have the benefit of having a graphics person and our Staff working on it versus an accounting person. Trustee Morris said it makes sense to put in some commentary such that this is a representation rather than a statement of accounts. Director of Finance Eick said sure and that on the first solid blue page, Staff tried to point readers back to that information that comes straight out of the Audit Report.

Hearing no further discuss, Chairwoman Wong asked for a motion to adopt the presented popular report format.
Trustee Horan made a motion to adopt the presented popular report format. Trustee Dent seconded the motion. Chairwoman Wong asked for any further comments, hearing none, called the question and the motion was unanimously passed.


District General Manager Pinkerton gave a brief overview of the submitted memorandum.

Trustee Callicrate said he has a concern with item and that he wants to just do what is required of us about what they told us and to do anything else, he would have a concern with that. The Board didn’t initiate this and it should have been done that way because the Board didn’t do this in a public meeting and the Office of the Attorney General did give us a violation of the Open Meeting Law and they made that crystal clear so let’s rectify and move forward. This is nothing personal on any one person rather he is just trying to get clarity.

District General Manager Pinkerton said that this is identical to Item J.1. and that Staff just added an additional item and put that onto the agenda for Board discussion.

Trustee Horan said as he recalls the only instruction was to have it be included on the agenda and there was no corrective action to take and then have the second item as well. There was no Open Meeting Law violation rather we are following the instructions and including it on the agenda.

Chairwoman Wong said it is her point of view to accept this and move on and don’t spend any more time or money on this as the Board already took action in initiating legal proceedings.

Trustee Callicrate said he agrees and he doesn’t want to spend any more money. One concern he has is on agenda packet page 404 and that was a Dropbox situation that when you click on that there is a series of snippets of
Mr. Wright that are not there in their entirety which was really startling to him. What are we doing in putting together a video that like it or not some comments were offensive and some were benign but that he doesn’t think this is something that the District should be involved in as a District as it is not right. People say things and we have to be big boys and girls as we signed up for the job and if it gets too much, resign or don’t run for the Board. He was really offended by this video and would like to know who authorized it, who assembled it, and what was the cost.

Trustee Morris said that this was part of a submission that was an exhibit and it was something that was done in December of 2017 and that there was an opportunity to review this so he is surprised that Trustee Callicrate is asking about this now.

Trustee Callicrate said that is a valid question and that he doesn’t remember that Dropbox link, doesn’t remember seeing it, and if he didn’t catch it in December of 2017, he apologizes for that. The bigger question is why was it included; it was a part of the forms that were submitted and it was an inappropriate submission because it is going after a person in the community and it is not an appropriate use of District time. He does appreciate Trustee Morris bringing that to his attention as he overlooked it.

Chairwoman Wong said anytime anyone gives public comment, it is just that and it is Livestreamed over the Internet as well as audio recorded. One has to use one own personal judgment because it is public.

Trustee Callicrate said when put together as a whole and he has been the recipient of Mr. Wright’s comments, the way it was put together and the tone it sets, there were important aspects that were left off. Everything is public as we show the public comment so show it all and don’t show bits and pieces. There may be some valid points but that he doesn’t think that the District should be creating its own reality.

District General Counsel Jason Guinasso said this was done in response to Open Meeting Law complaints as part of their retainer agreement so there was no additional charge for this compilation. On agenda packet 374, it was referenced under an argument and then used in response to several Open Meeting Law complaints. Of the twenty six Open Meeting Law complaints, he believes that Mr. Wright accounts for roughly fourteen of them. We argued that he brought this in bad faith, has a history of doing so, and included a log of complaints. District General Counsel Guinasso then read
from that document regarding the video excerpts and stated that the reason why the video was included was to establish bad faith which is a legitimate argument to make and noted that it has been included in several responses over the last year or more.

Chairwoman Wong asked if we needed to do anything with this. Trustee Horan said no and that the finding relative to the complaint is not correct but that is within the Attorney General’s purview to do that but that this is a moot point at this stage and we need to move on.

Trustee Morris said he agrees it is a moot point at this stage and that there is now a record at this meeting that we know that the facts that the Attorney General has created are not accurate and while they are wrong, we don’t need to move forward.

Trustee Dent said he didn’t think we should be besmirching community members and that he would like to take a different approach which is to respect the people of this community and not put videos together nor wasting the time to do it. Taking a different approach would be better in the future and not wasting any more money as we entered into litigation without the Board’s approach. He asked where in Policy 3.1.0 this was and he was given Resolution 1480 and the retainer agreement and it is not there. The Board spent $50,000 plus $10,000 to a non-profit, per GSGI direction, and we shouldn’t have done any of this because it needed Board approval. Enough time and money has been spent on this and he doesn’t want to spend $5,000 on this. Trustee Dent then asked if the three Trustees to the left of him could even vote and if this was a violation of ethics; that is a question for District Counsel. District General Counsel Guinasso said there is no ethical violation for wanting to disagree with the Attorney General. Chairwoman Wong added that this is a moot point as the Board revised its policy and that this issue is done and resolved. Hearing no further comment, Chairwoman Wong closed this item.

Chairwoman Wong called for a break at 8:12 p.m.; the Board reconvened at 8:22 p.m.

G.4. Review, discuss, and possible approve a three year agreement with Hutchison & Steffen for District General Counsel services at a cost of $12,000 per month or $144,000 per year (Requesting Trustee: Vice Chairman Phil Horan and Requesting Staff Member: General
Vice Chairman Horan gave an overview of submitted memorandum.

Trustee Callicrate said going back to the August 27 meeting, we discussed the process and we were assured that this was fact finding and that we would be engaged and allowed to have plenty of input and now here we are given this is who we recommend. It was brought up in December and the reply was we are reaching out to firms who responded. Moving forward with a $2,000 raise is a huge leap in the process. He was under the impression that the Board was going to be given documents to review and now we are at here is what the committee recommends. He would like to put this off as he was expecting to be more involved. He does have concerns about this last Open Meeting Law response and admonishments from others. This is about the professional work that the District has paid dearly for. This District has had a number of violations and things have been rectified but now we are looking at $144,000 per year for three years, when in the past, we went from roughly from $4,000 per month to $10,000 per month, so we are now coming close to $200,000. and now we have a guarantee of $144,000. He can’t move forward with this and he wishes the whole Board would have been involved with the process as this is a huge leap and he doesn’t appreciate it so he is not prone to renewing this contract.

Trustee Horan said that his interpretation that there was going to be a filter and that the next is why we are where we are tonight. You have the information we had from both firms and he thought that was the data to be brought back to the Board. You had the information we had when we reviewed this. This was not intended to take it out of the hands of the Board but rather it needed the filter to screen them. We had five, there was three we wanted to talk to, and we ended up with two very fine firms and you have the data as far as that information is concerned. Just because we made a recommendation doesn’t mean it is a done deal and he takes a little exception on the being a big surprise but you have the details.

Trustee Callicrate said he understands Trustee Horan’s perception; who was on the committee and was it Senior Staff and you. District General Manager Pinkerton said it was Vice Chairman Horan, himself, District Clerk, Director of Parks and Recreation and the Director of Human Resources.
Chairman Wong said that she was surprised with the rate as we can’t get that with an individual and that she was expecting it to be more around $240,000 a year given everything that we have to deal with so she is supportive of this recommendation.

Trustee Dent asked who determined the duties and responsibilities of counsel as that was one of his concerns and that Staff not make any decision so when will the Board decide what the responsibilities will be. District General Manager Pinkerton said the responsibilities didn’t vary from the responsibilities of what they currently are and that there were no changes in scope of the duties of legal counsel at this time.

Trustee Callicrate said in a community of a couple of hundred thousand people perhaps $240,000 would be justifiable and in looking at the types of concerns and complaints from the community with the generation of the bulk being Open Meeting Law complaints and record requests perhaps, to Trustee Dent’s point, what are we doing that we can do better or to bring down the vitriol from one or two things and that he knows this is pie in the ski and that this discussion should have occurred before retaining counsel. Up until RKG was hired, counsel worked for the Board and that has been changed in the last contract revision and it looks like we are basically seeding all our control over to the General Manager which is not the intent of our Board policies and procedures. Can we wait until those are changed? Also, looking at attending meeting with Staff and the governance of the District, that was not the role of our attorneys. Their role was to keep us from having Open Meeting Law complaints and hard core litigation which we have farmed out to Mr. Beko. We have had a real hard time when we had a slew of issues starting in February 2016. This is the cart before the horse and that General Counsel has far too much control over what the District does and to conduct mock meetings before the actual Board meeting is untoward for a General Counsel whoever that is. To Trustee Dent’s remarks, we, as a Board, should go through a laundry list because we don’t need all these services and perhaps cut them all in half because we are spending a lot of money where we should be cutting back and not increasing.

Trustee Dent asked if we had the contract reviewed by independent legal counsel so that we can make sure the agreement is compliant with our policies and Nevada law. District General Manager Pinkerton said no. Trustee Dent said it seemed like we jumped the gun as we should have done that. He doesn’t have anything against Hutchison & Steffen as his only dealings have been with our attorney Jason Guinasso.
Trustee Morris said that he didn’t recall any discussion where we were potentially interested in changing the services for the General Counsel when it was brought and that there was no need to change them because whoever counsels us, we were comfortable there. He is surprised that there weren’t more law firms to respond but that it boils down to two high, well qualified and experienced firms, and then it comes down to cost and either we pay $144,000 to Hutchison & Steffen or pay McDonald Carrano $240,000 plus any additional work to be done. Hutchison & Steffen hourly rates are also less and we know we have a small litigious group thus we will have to call upon them. Because they are both reputable firms, why would we want to pay more if we are getting the same quality of service? It is an easy decision for him to make and if the committee got five firms, it might be a different decision but we have a black and white decision before us which is $144,000 per year plus reasonable hourly rates or $240,000 per year and higher rates; he is happy with these rates.

Trustee Dent said we only got the responses we did because the ad ran for four days and he specifically brought up having outside counsel to review the agreement and when he asked about what we would have them do, he was told it was not the time and that we would have the discussion later so when are we going to do that. We need to do a better job at vetting the attorney as we could have more options and we should have four or five. We, as a Board, should determine which two or three go after we decide what we want our counsel to do.

Trustee Callicrate said that he agrees with Trustee Dent on having an independent counsel do a review. He appreciates the work done and now we have an opportunity to take a breath and put this out for a longer period of time and seek out the professionals and see if we can bring in qualified individuals on a more limited scope of works for the needs of the District, Board, and the community. We need to reset the tone to show the community we are trying to do this as effectively as possible and trying to work in a more consolatory way. It would be a greater service, in the eyes of the community, to put out a more limited scope of what we want, shop that around for more than four days, as he too is surprised with the response. If we have the same two, we are doing a disservice to our community.

Chairwoman Wong asked the District General Manager to describe the process. District General Manager Pinkerton said that marketing people are
tracking all these ads and they have a service that tracks RFP’s or RFI’s and when you post it on a public agenda, people are aware of it.

Chairwoman Wong said she hears your concerns about wanting to revise the scope of duties but in her mind, in order to protect the District, and not the Board, Staff or the General Manager, but the District as a whole. Her concern with limiting is it will open ourselves to potential areas of risk. Any General Counsel that we have, there is a level of professional responsibility and that encompasses it and that by limiting that we are opening ourselves for more risk.

Trustee Dent said it is quite the contrary as we are already open to risk as we got into litigation without the Board giving its approval, Staff sold land without Board approval, paying fees on public records that we don’t give us, and we have an outside attorney handling that who he called and he hasn’t had a response in six days. Based on the current set up, it is not working for us, it is not working for the community. Our attorney is used as a weapon against us and our community and we need to rein that in and set responsibilities and follow Resolution 1480. The General Manager is not supposed to be managing the attorney, he can manage everyone else, and we need to do a deeper dive into this. The contract expired in December of 2018 and we, as a Board, need to have this discussion of what do we want and how much do we want to spend. Previous Boards were spending $5,000 a year. Our own former General Manager said he couldn’t imagine what we could be spending this amount of money on so the District has survived fifty years on a lot less. Let’s discuss this as we should.

Trustee Callicrate said that Mr. Brooke came close to $10,000 to $12,000 per month when there were voluminous briefs going back and forth to the courts. That was then farmed out to Mr. Beko in Reno and we then incurred $90,000, then $45,000 and then $55,000 so we, as a Board, need to have a much stronger control over the attorney. The General Manager doesn’t have the authority given that it is against our own Board policies. In light of what has happened in the Attorney General office, he doesn’t think this is going to set us in the right light with what the community wants us to do. He can’t justify $12,000 per month; he would like to spend half of that especially when you look at what we pay versus other GID’s. Getting ourselves into more Open Meeting Law complaints is setting bad precedence so let’s take a step back and reassess what we want. Let’s re-establish and then go out to specialized firms and with that we would be far, far, ahead.
Trustee Callicrate said he would like to move to put this on hold and pull this. Reassess what we are doing and then reagendaize for the next couple of meetings and let things calm down and see what we need to have in legal services. Trustee Dent seconded the motion.

Chairwoman Wong asked for comments, receiving none, she called the question – Trustees Dent and Callicrate voted in favor of the motion and Trustees Horan, Wong, and Morris voted against the motion – the motion did not pass.

Trustee Horan said that a number of the comments relative to the legal counsel and the Open Meeting Law he thinks there is a lot of misunderstand in that as his understanding is that there have been twenty six Open Meeting Law allegations, not violations and that anybody can write those. There have been three where there were some issues with one being about a clear and complete agenda which again is an art and not a science. Another was the results of minutes not being approved timely and the interpretation by the District and that was corrected and that is was not a question about the minutes not being available. The Attorney General was very specific that they were not approved timely but that the minutes were available. The third one was the one tonight and there is a clear disagreement about the General Manager had that authority and there is some evidence found that the General Manager had that authority.

Trustee Dent said that he doesn’t think that exists and if you could provide that it would be great. Chairwoman Wong asked Trustee Dent to let Trustee Horan finish.

Trustee Horan said he didn’t accept the argument and it was rejected but that he doesn’t know if those were the specific words or not.

Trustee Dent said he would like to see it as he has heard it said but it doesn’t exist so he would like to see it.

Chairwoman Wong again asked Trustee Dent to let Trustee Horan finish.

Trustee Horan said that there was another one regarding an allegation about our Chair that was found not to be a violation. There have been a lot of allegations so to say there have been a lot of violations is not true. We strive not to have any of them but we can’t expect people to not file those and if
we make a mistake, we correct it. To say otherwise is egregious and an overstatement.

Trustee Dent said we have had seventeen violations with fifteen times being meeting minutes.

Trustee Horan said you can call that fifteen times but he disagrees and it was one time and it has been corrected.

Trustee Dent said he is just using their numbers.

Trustee Morris said it is correct from his recollection and let’s go back and check the minutes. Trustee Morris then said that Trustee Callicrate inferred that our Counsel went to the Supreme Court spending our money without any Board approval. His recollection is that those matters came to the Board, we voted, and that it is a continuing matter that we continue to vote upon. Trustee Dent asked what Trustee Morris was saying. Trustee Morris said he is responding to what Trustee Callicrate said and that the only time we have gone to the Supreme Court is with the Katz case. All those matters came to the Board and we voted on them. Chairwoman Wong said that is correct. Trustee Dent said it didn’t happen to GSGI. Trustee Morris said it didn’t go to the Supreme Court and he is not the lawyer in the room but there are those that are not unbiased in this and contracted with him and sent our diabolic surveys. The matters were settled and nothing at the behest of GSGI after a preliminary injunction was grant to the District, a settlement conference occurred and settlement was agreed. Chairwoman Wong said she is not sure if this does any good to rehash any of this and should we be rehashing every piece of legal conversation or vote on this and move forward.

Trustee Callicrate said that he thinks it is critically important if we have all these issues from the last four years on the continuance of District General Counsel’s services. There has been no third party review of the legal contract and statement of what we are trying to have our legal counsel do. This could be a tremendous misstep and we have the opportunity, if it is meant to be, to have one or two more meetings go by and go out and re-submit an RFP and see if we get additional replies. We need to discuss responsibilities of what our General Counsel services should be. He was caught off guard as he thought we would be discussing this and then over the next couple of meetings, vote. Thinks it is prudent to take a step back and take a look at this because he can’t support it as written. He would like
to have more discussion about the restrictions we put on legal counsel and that he is trying to be upfront and find some commonality.

Trustee Morris said, to one point, this is a question for the General Manager and General Counsel and that is the external review of our contract – what would be the cost of doing that. District General Manager Pinkerton said he has done a lot of these and your attorney has an ethical duty to give us a contract and while he doesn’t assume that it isn’t mutually beneficial, this agreement has stood the test of time. It is up to the Board and it would be between $5,000 and $10,000 to review.

Trustee Callicrate said that he has an observation to bring up and that was about the General Manager maintaining direct supervision. There are opportunities to really work through this and come up with a great situation and again if Hutchison and Steffen tightens it up, great, and if they don’t, then it is someone else and at a smaller amount. The Board has opportunities that we haven’t exercised and he has weighed in enough; his motion died so it is up to the majority of the Board.

Chairwoman Wong asked District General Manager Pinkerton if he knew what other entities pay for their legal services. District General Manager Pinkerton said it is always hard to do an apples to apples comparison so we tend to look at limited entities; City of Truckee pays $350,000 per year, Boulder City is at $500,000, Elko is at $600,000 and they have a smaller budget. If you take a look at South Lake Tahoe, they spend $874,000. If you are looking at a typical in-house counsel with salary, benefits, and a paralegal then you are looking at between $300,000 and $350,000 and you don’t get the full resources of a full firm. Agencies our size prefer to get all the services and our retainer is on the lower end of the size and scope of duties.

Trustee Callicrate said that the billable hours, which is customary, may be seen as a conflict of interest as additional hours of billings is a potential to generate additional opportunities which has many people concerned. This is strictly about professional services and not the individual so he is trying to be as clear as he can and that he is going on dollars. District General Manager Pinkerton said that we do keep most of those services in house and when finding a problem, it is something that the General Manager, Board, and Legal Counsel discuss. We also have the situation where the POOL/PACT may cover. The only specialized legal service was the solid waste contract where we did use a separate counsel. What we see is the
general retainer services are just like the insurance dollars we pay to the POOL/PACT and something we can get back especially when we are doing millions and millions of dollars of contracts. For our employees, we need counsel for most employment matters to make sure we do everything we can do to be responsible. All it takes is one bad decision. His decision to do the previously mentioned lawsuit (GSGI) was about contract enforcement and he didn’t think it would cost that much so the detail is the amount of service and we get hundreds upon hundreds of hours of service and when the other firms came in, they saw that.

Trustee Dent said that the Board never determined the duties and responsibilities for legal counsel. District General Manager Pinkerton said it was outlined in the cover letter and was the same we have offered for the past four years. We, as the professional Staff, recommended the status quo because we want to responsibly manage the assets of the District.

Trustee Horan made a motion to approve the three year agreement with Hutchison & Steffen for attorney services to the District. The monthly retainer fee is $12,000 per month or $144,000 per fiscal year. Trustee Morris seconded the motion.

Chairwoman Wong asked if there were any further comments.

Trustee Horan said that some good points have been raised and while the performance has not been perfect, it has served the District and he is excited about this firm and it is their reputation that is on the line. If our current counsel was a part of our previous smaller firm, he would have had serious thoughts about that. We can talk about the RFI which got us two high quality firms. Price is not a required factor but we got an attractive fee arrangement from a broad based firm that we have experience with so we don’t have to train a new firm which was one of the primary drivers.

Trustee Dent said that General Counsel Guinasso lied to this Board regarding the chart of accounts, the premise for GSGI was for the customer data that I VGID gave to GSGI which doesn’t exist, and the Board didn’t grant the authority to sell public lands – we have been directly lied to. The alleged conflict that he had was bogus because General Counsel Guinasso cannot stop him from attending a meeting as that is his decision and the ethical decision lies with him and thus asking him to leave was wrong. Mr. Guinasso wouldn’t give a legal update because he was present and that was wrong. Keeping a Trustee out of a meeting is illegal as well. He didn’t understand
or push back because he didn’t get it. So he asked General Counsel to get him some guidance from the Ethics Commission. He said he would and that he would get something in the next week or two; nothing happened. Then there was a meeting to talk about GSGI litigation and the General Manager told us he relied on General Counsel guidance. Maybe he is disturbed, maybe it was retaliatory but on March 9, the same date you were meeting, General Counsel filed an Ethics Complaint against him. General Counsel named Trustees Morris and Wong as witness to something that didn’t happen. Trustee Dent continued that he hired counsel from Las Vegas who sent a letter that took six months to get an opinion and to get input from the General Manager. He doesn’t know where this all this goes but we do need to reconsider this situation here and figure out a different way forward because this General Counsel has a conflict.

Trustee Morris thanked Trustee Dent for his comments. We are all entitled to our opinion, thank goodness, and that we can have a healthy debate. However, Trustee Dent didn’t say it was his opinion rather he stated it as fact. You are entitled to your opinions regarding an Ethics Complaint against you and whether he responded or not. But you just laid out things as if they are factual and they are not. Trustee Dent asked what was not true. Trustee Morris said when you said he lied to us. Trustee Dent said he said the Chart of Accounts doesn’t exist and you honestly believed that. Chairwoman Wong said that is a gross mischaracterization of what he said as he said it didn’t exist as a public record. Trustee Morris said you have to be careful with your words as you exaggerated. Trustee Dent said that the Chart of Account existed; can we acknowledge that. Chairwoman Wong said that Trustee Morris has the floor. Trustee Morris said that he one hundred percent believes that our General Counsel has never said anything to us that he doesn’t believe is not true. We have learned that the ways of doing things in the past had to be acted upon and corrected. One of the things that we corrected was the we clarified and changed the policy that the General Manager needs to come to the Board before initiating any legal action. Whether that should have been done before is always worthy of a discussion and we have agreed what we are going to do in the future. He didn’t have the opportunity to write down all your comments that you made but he does think that you made a gross mischaracterization of many things that have occurred on this Board since he has been a part of it and that there may or may not be others. Chairwoman Wong said that she appreciates the comments everyone has made. We have two very reputable firms that went through the entire process so she doesn’t think we can go wrong. In terms of the comments about the General Counsel, in general, we don’t always
agree on everything and what she does respect is that he has always been honest with her about discussions, items, or questions and she is very much appreciative for having Mr. Guinasso as our legal counsel. She agrees with Trustee Morris that has been a lot of gross mischaracterization about things that have happened in the past. She is most disheartened because we have addressed the Open Meeting Law complaints and we have taken corrective actions and we have concluded on these legal actions. This Board needs to accept them and use them as learning experiences and move forward. We are a Board of five volunteers which means all of us can make mistakes and that’s why we have a professional staff and legal counsel. If we want to talk about why we can move forward as a Board, this conversation is it.

Trustee Callicrate said before the vote is called, he has two things to bring up – he appreciates the comments and valid points. Do find it very alarming, as this is the first he has heard of it, that our own legal counsel or prior firm would file an Ethics Complaint against one of the five Trustees. His jaw is still on the floor as he had no idea that had taken place. That should be a huge alarm bell to the Board and the community in general and concurrent with that, to have two Trustees named with bona fide affidavits in this complaint is a tremendous conflict of interest. There are two Trustees that have been cited in an Ethics Complaint against one of their colleagues so to vote, that can’t stand as it is overwhelming in the conflict. We need to do a much better job, as a Board, and put this on hold. This ethics thing – it is the first he is hearing of this. Chairwoman Wong said that she has no idea of the details. Trustee Callicrate said to better serve the community, we need to have the information and find out about this Ethics Complaint and the facts because he needs to know because this could potential alter moving forward on this item. He doesn’t want to see any one of us have a conflict of interest as we have way too much stuff to get done and this is critical so really listen to what he is say. Don’t want to create a legal issue into hard core litigation. In light of hearing this information, he doesn’t think we can vote on this without a conflict of interest. He is shocked and sorry for rambling but he had to say this. Chairwoman Wong said it is up to Trustee Dent if he wants to discuss that as that is no one else’s decision to make except Trustee Dent. Trustee Callicrate said he was talking about you and Trustee Morris and voting to move forward on the attorney who has filed a violation. He doesn’t want to embroil us in a lawsuit moving forward; he is really concerned. Trustee Morris said he categorically doesn’t see any conflict with the General Counsel raising an Ethics Complaint or doing so against him or the public or against you. While he is not well versed in Ethics Complaints handling, he does believe there is a separate Board and that it will play out
however it does so. As for becoming a Trustee, he was elected and whilst he doesn’t recall the exact oath of office, one of the things in his heart is to speak the truth, look at the facts, and make the decision that any reasonable person would make. If he is interviewed in this Ethics Complaint, he will tell the trust and expect the same if the situation was reversed. He sees no issue in participating in this motion. Trustee Dent said you can file a complaint against me and I can do the same to you. Our General Counsel told him that he had a conflict, he didn’t think he had one; said he can’t vote in a closed meeting and he only had an ethical matter and you can check the Nevada Revised Statutes. He then asked the General Counsel to put an opinion together and to reach out to the Ethics Commission and he told me he would do that. Then all of a sudden, after not doing that, an Ethics Complaint is filed against him by legal counsel. He is our attorney that we go to for legal advice and in theory he is filing a complaint against you based on the issue in front of us. And you don’t see an issue with that? Trustee Morris said in a legal non-meeting we can’t discuss an ethics issue and we can’t take a vote. A legal non-meeting, one of the key elements is for the attorney to bring forth information to us about issue that should fit into that, we don’t debate it or vote on it. In the legal non-meetings, we often had information that pertains to the running of the District and he sees that as it should be. He recalls the meeting where you were asked to leave and it was the night that the lights went out. You were asked to excuse yourself and you objected. You were not commanded to and the meeting never occurred because with the lights being out that meeting was adjourned thus he fails to see any issue. Trustee Dent said you don’t see an issue with your attorney doing this. Trustee Morris said he wasn’t sure what Trustee Dent was asking him to agree to.

Chairwoman Wong said that the Board needs to end this conversation and that she does need to make one disclosure; she did know about the Ethics Complaint as Trustee Dent’s attorney sent a letter to her that was forwarded to District General Counsel Guinasso however she doesn’t know the contents.

Trustee Callicrate said there remains a conflict of interest and this needs to be dropped from the agenda because you and Trustee Morris have a problem and while he hopes you don’t have a problem, you are the Chair so do what you want.

Chairwoman Wong, hearing no further comments, called the question – Trustees Wong, Morris, and Horan voted in favor of the motion and
Trustee Dent voted against and Trustee Callicrate voted against with protest. The motion passed.

At 9:42 p.m., Chairwoman Wong called for a recess; the Board reconvened at 9:50 p.m.

G.5. Review, discuss and possibly take action on Board’s Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong gave an overview of the submitted memorandum.

Trustee Dent said that he likes that this is being brought back to the Board as it gives us a starting point. Are we going to have a discussion or a meeting? Or maybe we will be having some action items or are we going to dive into those or others. Chairwoman Wong said that the main priorities are to specific action items and we did this two years ago. Trustee Dent asked if we are going to have it in the packet for the meeting so we are not reinventing. Chairwoman Wong asked the Board Clerk to send out to the Board the recap that you did and add to the next agenda.

Trustee Morris said that he liked the idea very much of having these as overarching goals, etc. and that his one concern is that, in retrospect, looking at all that we thought when we did is probably a lofty task of doing everything and is not achievable. We need to decide what our roadmap is and break it down amongst all of these things and actually achieve as a small number of them as a check and balance and make sure we are headed in the right direction.

Trustee Callicrate said he likes the general category because they are critically important or at least parts of them. Doesn’t need to be a long drawn out session so let’s have something specific, like two hours, be time specific and drill down. We need to move through this and come up with two or three more points. He likes actionable items and would like to have a standalone, couple hour workshop.

Chairwoman Wong said she too would like a separate workshop so when we get to the long range calendar, let’s set a date. Please come up with your thoughts about what we have accomplished, what we need to do, etc. so we are all in agreement.
G.6. Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong gave an overview of this agenda item.

Trustee Dent said are we going to go through each of these titles and get a draft version or have them all in one grouping. Do you have anything regarding Title 1, agenda packet page 441, amending the IVGID Code as it relates to the management by the District General Manager as we should all be clear that all of the responsibility is with the Board to manage those items and he wants to ask the General Manager to bring this forward but he doesn’t know how to do this. Chairwoman Wong said that relates to amending the code. Trustee Morris said that anything in yellow is all proposed and that it doesn’t exist anywhere. Trustee Callicrate said he was at that meeting and this jumped out at him as well. He remembers something elsewhere that slightly changed the responsibility of the Board and then delegated it to the General Manager. That was the only thing that jumped out at him. It makes it very clear that the Board has the responsibility for the code and management thereof unless we delegate. Chairwoman Wong said it appears we are all in the agreement and that she has provided her comments that are to be included. Trustee Callicrate said at first blush, it is a good first step, but there is a lot of work ahead for us. Chairwoman Wong said her other comments are about readability, legalese, and getting it closer to something the lay person would understand. We can address that now and then come back to Title 1 and see how the pieces fit together. Trustee Dent said his question is do we see it all such that here is our draft and are we all in agreement on that. Trustee Morris said as we go through this are you seeking confirmation that we have finished a section and that we may come back to it. The first chapter is relatively simple and we aren’t locking anything in stone as we will get the whole thing then the Board agrees that’s it. However, plain English would be good. District General Counsel Guinasso said that one of the reasons that the first chapter is legalese is that it sets the tone and we will come back to terms to define. Today was a good example regarding net position, etc. In that section you will find all those terms of art. Title 1 is the one section with the most legalese by necessity. All the highlighted sections are suggestions that need to be put in there. As to amending the code, think about what the process and procedure you want and think about what the schedule is that you want to keep. Going forward, you will review sections of the code and in two or three years you will have touched every title and it is of note that this will require a lot more work of you. Chairwoman Wong said we can come back to this at the end.
Chairwoman Wong said as to the titles to tackle next she is thinking that Title 5 because it is related to the budget process as well as finances and property. Trustee Dent asked to prioritize the Ordinance 7 title as we have tried to tackle that several times so could we put that as a priority. District General Manager Pinkerton said you had your workshop where you started to flush it out and noted that Ordinance 7 will become a higher priority for the Board as you will need to have a higher philosophical discussion and that at your next meeting, Staff will have 4th of July and beach updates. He would ask that the first shot at Ordinance 7 would be sometime during the summer. Trustee Dent said he agrees and that we have gotten feedback for years and that he would like to start looking at it now and throw out what he is thinking. District General Manager Pinkerton said instead of doing this at the end of a meeting and in order to facilitate a more robust meeting, he would recommend doing it as a retreat. Chairwoman Wong said she would like to tackle Ordinance 7 after the budget and tackle Title 5 during the budget and then kick off Ordinance 7. District General Manager Pinkerton suggested April; Trustee Dent said he is okay with April. Trustee Callicrate said he likes that idea and wants to get it on our radar sooner rather than later. District General Manager Pinkerton said he will put it on the calendar for April 10. Trustee Morris asked which title. District General Counsel Guinasso said it was split into two titles – 9 and 10. Chairwoman Wong asked if we could get a condensed table of contents with titles only and then the articles. District General Counsel Guinasso said that was page 23. Chairwoman Wong said she would like that moved to the front. Trustee Dent asked that page numbers be put to it. District General Counsel Guinasso said that Title 9 is beaches and Title 10 is Community Services and that this is a proposal that you have to discuss and debate. Trustee Morris said when we get to it, agenda packet page 435, Title 9 is about beaches and there is a lot of stuff – it has only got one page so is there more to come on that. Chairwoman Wong said it is four pages. District General Manager Pinkerton said right now it is all in Ordinance 7 so there is nothing new. Trustee Morris said so agenda packet page 246 would go to page 435. District General Counsel Guinasso said that is what you get to debate. Trustee Morris said thank you and that he now understands.

Chairwoman Wong said that our next title will be Title 5 then in April we will work on Titles 9 and 10.

G.7. Election of Board Officers for 2019 – effective at the end of this meeting
Chairwoman Wong said she doesn’t know how this will shake out but that it has been a pleasure serving as your Board Chair and turned over the elections to the District Clerk.

District Clerk Susan Herron said that the nominations are now open for Chair or a slate of officers.

Trustee Morris said he would like propose a slate of officers as follows:

Chair – Trustee Wong  
Vice Chair – Trustee Horan  
Treasurer – Trustee Morris  
Secretary – Trustee Dent

Trustee Dent declined to be Secretary and asked if Trustee Callicrate could be Secretary.

Trustee Morris revised his slate to read as follows:

Chair – Trustee Wong  
Vice Chair – Trustee Horan  
Treasurer – Trustee Morris  
Secretary – Trustee Callicrate

Trustee Horan seconded the revised proposed slate of officers. Chairwoman Wong asked for comments, receiving none, she called the question and the slate of officers’ motion was passed unanimously.

G. DISTRICT STAFF UPDATE (for possible action)

G.1. General Manager Steve Pinkerton  
a. Mountain Golf Course Clubhouse  
b. Pending FEMA Reimbursements

District General Manager Pinkerton gave a brief verbal update and said regarding Item G.1.a. that Staff is awaiting information from the insurance company and that Staff is about three weeks away from submitting plans for permits. The District does have insurance proceeds available for paint and carpet and we have a very good interim plan for this summer. This will be pretty close to status quo and it will allow the District the time to work more
on this and get a more realistic proposal to bid out and then proceed with the work; he will provide another update at the next meeting.

Trustee Callicrate said thank you for the update and knows that he has expressed concerns during the last two times and that based on the prior stated golf wishes/needs, he would ask that this be looked at as the whole property to include the cart barn and maintenance facility and see if there is some way to justify a complete rebuild. He doesn’t want to see the District getting into the oldest building and this building is a wreck as he worked there and he knows that the cart barn has its own issues. He wants Staff to look at the bigger picture when getting into this project and if that is going in for $1.5 million dollars or $2 million dollars, we need to have another option other than remodel. It is his own personal feeling that in looking at the whole picture and the broader site which is a spectacular setting, we need to have a flexible building with everything and have it make sense. Two buildings held together with Band-Aids and bailing wire is not good as these facilities are woeful and long overdue for replacement. District General Manager Pinkerton said that on March 18, we can present the Board, in the CIP, with the numbers as the timing is perfect.

District General Manager Pinkerton said regarding Item G.1.b., that a member of the public had some questions about FEMA reimbursements; we are awaiting reimbursements of about $12,000 for the wetlands, $38,000 for Diamond Peak and $331,000 for the culvert and reminded everyone that reimbursement take time.

Trustee Morris asked if the Board could get a refresh of what our total FEMA dollars were/will be versus our costs. Director of Finance Eick said that each one of the FEMA grants have a different matching percentage and that generally speaking they are from twenty five percent to seventy five percent of the costs. For the Diamond Peak building, they are covering a smaller portion with the insurance proceeds being almost $90,000 and the FEMA grant being $38,000. On the culvert, it was fifty to seventy five percent and we extended the scope of that project and found some additional costs but he doesn’t have an exact amount. In terms of what was represented, we were given a grant, we did the work, and applied for the grant which is not the exact answer. Trustee Morris said he was talking about the Diamond Peak culvert and the damage from the snow disaster and that what he is wanting ultimately is to have a summation of what was spent on that repair in total dollars and how much did it cost us because of insurance and FEMA.
Director of Finance Eick said he will get you that information as it spans multiple fiscal years and that it will go into the next General Manager’s report.

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

1. Regular Meeting of January 23, 2019

Trustee Dent said that Ms. Miller had some issues with these minutes. Chairwoman Wong said let’s append the minutes with her e-mail at the end.

Chairwoman Wong made a motion to approve the minutes as submitted but include the e-mail written by Ms. Miller as an attachment. Trustee Morris second the motion. Chairwoman Wong asked for comments, receiving none, called the question – the motion was passed unanimously.

**I. REPORTS TO THE IVGID BOARD OF TRUSTEES**

1. District General Counsel Jason Guinasso
   a. Possibly review and discuss Office of Attorney General (OAG) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – *Finding by OAG of no violation*

District General Guinasso gave an overview of the submitted memorandum.

Trustee Horan noted that in the last paragraph, the Attorney General does give credit to District Counsel Guinasso about stopping us from discussing other items.

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

Chairwoman Wong said that she, District General Manager, and the Director of Parks and Recreation are going to Washington D.C. in March to visit the Nevada delegation and our legislative advocate Mr. Faust.

Trustee Morris said that on Friday, February 8, he will be attending the meeting of the Washoe County Debt Commission as there is a tied vote on representation and it is his understanding that the representative will be selected by the drawing of lots and he will report the outcome at the next meeting.
Trustee Dent said that the Nevada League of Cities had their in-vesture luncheon and that they will have subcommittees, etc. Chairwoman Wong said she will attend the Mayors and Chairs when she can and call in at other times.

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

Frank Wright said he has been sitting out front and listening to the accolades given to District General Counsel and his competency; he is not competent, he shouldn’t be an attorney, and he should not be representing our District. To say that Mr. Wright had x number of them, well, a lot of them have required you to take action. To also have a Frank Wright’s greatest hits and to go through the public comments period and put those together as a compilation is sick. If he is going to be fair, put everything there – why not have a complete compilation? When he calls him a liar, it is because he has basis. When he said Trustee Horan didn’t live here, well, he hasn’t lived here for six months. Trustee Morris on the Debt Management Commission – he is now in bankruptcy court and being investigated for Medicare fraud and he is our Treasurer; you can make this stuff up. And District General Counsel, you can cut this one out too. Now, tonight, we find out that you filed a lawsuit against FlashVote and then went an Ethics Complaint against Trustee Dent.

Linda Newman said she will be brief; let’s be clear, Trustees Wong, Horan, and Morris took action to initiate the action of a lawsuit against a local business and we know this to be true because Chairwoman Wong said so in her campaign. This lined the pockets of the attorney in the amount of $50,000 and Counsel falsely said that the General Manager did. The Attorney General found that Trustees Wong, Horan, and Morris acted wrongly. Also they stated that the District General Manager didn’t have any authority. This harm is beyond repair. It is an assault on all standards and District General Counsel should refund, to the District, his annual fees and the fees for the unauthorized lawsuit. District General Counsel shouldn’t be seated here and she doesn’t understand the objectivity that three Trustees would give him a three year contract.

Trustee Morris said that Mr. Wright stated that he was being investigated for Medicare fraud; he is not being investigated for Medicare fraud and he has never been in the Medicare business.
L. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)

District General Manager Pinkerton went over Long Range Calendar.

Trustee Morris said regarding the meeting of February 27, he may begin the meeting by attending via telephone and then physically join it in progress.

Chairwoman Wong said please add March 13 as a Board Workshop and then a utility rate discussion on March 18.

District General Manager Pinkerton said we will also add to April 10 a discussion regarding Title 9 and 10 (Ordinance 7).

Trustee Callicrate said he would be out of country, in Italy, in June but that he will call in.

Chairwoman Wong asked to move the October 23 meeting; Trustee Dent stated he has a conflict with October 9.

Trustee Callicrate said that he hasn’t been getting the Board meeting dates so please resend those to him.

District General Manager Pinkerton asked how the Board would like to handle the Board Work Plan workshop. Trustee Morris said he would like to do it sometime during the day. Chairwoman Wong said she is challenged on daytime. Trustee Dent recommended starting at 5 p.m. The Board agree to having a workshop on Thursday, March 14 starting at 6 p.m. and ending at 8 p.m. for the Board Work Plan.

M. ADJOURNMENT (for possible action)

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Susan A. Herron
District Clerk

Attachments*:
*In accordance with NRS 241.035.1(d), the following attachments are included but have neither been fact checked or verified by the District and are solely the thoughts, opinions, statements, etc. of the author as identified below.*

Submitted by Judith Miller (1 page): Gmail – Minutes of the January 23, 2019 BOT Meeting dated Wednesday, February 6, 2019 at 6:03 AM

Submitted by Aaron Katz (32 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item F(1(b) – Utility Rate Study

Submitted by Aaron Katz (4 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item G(4) – Judicial review of the office of Attorney General’s (“OAG’S”) findings and conclusions in File No. 13897-257 finding an Open Meeting Law (“OML”) violation

Submitted by Aaron Katz (12 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item C – Public Comments – More evidence the advice given to the Board by its Staff and Attorney are flawed – here lobbying to influence legislation

Submitted by Aaron Katz (15 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item J(1)(a) – Open Meeting Law (“OML”) File No. 13897-305 – The office of the Attorney General (“OAG”) did not find that Chairperson Wong’s July 6, 2018 letter to the U.S. Department of Transportation (“USDOT”) impermissibly committed IVGID to spending $7.5 million in matching build grant funds to construct Tahoe Transportation District’s (“TTD’s”) Bike Path Project

Submitted by Aaron Katz (15 pages): Written Statement to be included in the written minutes of this February 6, 2019 regular IVGID Board Meeting – Agenda Item C – Public Comments – Failure to acknowledge findings of fact and conclusions of law re: Open Meeting Law (“OML”) violation

Submitted by Mike Abel (1 page)

Submitted by Sara Schmitz (1 page)
Minutes
Meeting of February 6, 2019
Page 38

Submitted by Linda Newman (10 pages): IVGID February 6, 2019 BOT Meeting
Public Comments by Linda Newman – To be included with the minutes of the meeting

Submitted by Kevin Lyons (1 page) NRS Chapter 195 – Parties to Crimes
Minutes of the January 23, 2019 BOT meeting

1 message

Judith Miller - judithmiller@gmail.com
To: wong_trustee@ivgid.org, horan_trustee@ivgid.org, dent_trustee@ivgid.org, callibrate_trustee@ivgid.org, morris_trustee@ivgid.org

Wed, Feb 6, 2019 at 6:03 AM

Members of the Board,

Once again, our Board Clerk has failed to provide an accurate summary of my public comments. I do not feel it is my responsibility to do her job. I know the task is time consuming, but of extreme importance since streaming video and audio recordings are only temporary. This is the only permanent record of what has transpired. And since our Board correspondence, against the directives of the Board, is no longer included in the Board packet, my objection to Ms. Herron’s minutes will also not be a permanent record unless I include them in my public comment.

Here are my objections to the January 23, 2019 IVGID BOT meeting minutes prepared by Ms. Herron.

1) She did not properly identify the document I was quoting so readers will not be able to find the text of that document.

2) She mistakenly used the phrase, customer service “reality”, instead of “mentality”, making the sentence incomprehensible.

3) She failed to capture the essence of my comment, i.e. The State of Nevada instructs that it is the duty of its public records officers to assist citizens in identifying requested public records if the request is unclear. Citizens of our small community deserve at least as much assistance in their public records requests as the State of Nevada requires of its public records officers. Mr. Pinkerton’s assertion that Ms. Herron has to literally respond to a citizen’s request for public records is untrue. Ms. Herron should communicate with the public to determine what records are being requested.

I and others have come to the Board on numerous occasions to ask that the minutes be modified because our comments were inaccurately summarized. I do not think I should be placed in the position of having to rewrite the minutes. I ask that you 1) Instruct Mr. Pinkerton to immediately relieve Ms. Herron of her duties of preparing/revising minutes and assign those duties to someone more capable. She has repeatedly proven herself incapable or unwilling to perform this task in a professional and unbiased manner and 2) Refuse to approve the minutes until they are modified to accurately reflect what has transpired.

Thank you for your attention to this matter.

Sincerely,

Judith Miller
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM F(1b) – UTILITY RATE STUDY

Introduction: Here staff have asked that a public hearing on their proposed water/sewer rate increases be set for April 10, 2019 without the benefit of another hearing on its rate study, and on the Consent Calendar no less! This is after representing that this agenda item will expressly involve "review (and) discuss(ion) of staff’s rate study. A disingenuous description given staff knows that under Board Policy 3.1.0.15¹ there can be no discussion whatsoever of consent items. Moreover, this item has been improperly placed on the Consent Calendar. Per Policy 3.1.015, “a memorandum will be included in the packet materials for each Consent Calendar item (which)...should include the justification as a consent item in the Background Section.” Although staff have prepared such memorandum², nowhere in the Background section³ do they set forth the justification for placing this matter on the Consent Calendar. For this reason alone, this item should be transferred to the General Business portion of the agenda. This afternoon I made this request to the Board, and a copy of my e-mail request is attached as Exhibit “A” to this written statement.

Staff’s rate study has set the public up for yet another round of increased water/sewer utility rates. Notwithstanding the Board and the public are told that staff’s intent is to balance rates “equitably among (all) user classes,”⁴ as the reader will see, nothing could be further from the truth. The glaring problem with staff’s methodology is at least fourfold. First, staff is using a rate model which for decades has granted preferential and discriminatory rates to IVGID’s money losing recreational businesses as well as its commercial collaborators’ businesses. Pages 290 and 296 of the AWWA Manual⁵ instruct that “while recovery of the full revenue requirement in a fair and equitable manner is a key objective of a utility using a cost-of-service rate making process...rates must be just...reasonable and bear a rational relationship to a legitimate government interest.” For these reasons, IVGID’s rate preferences and discriminatory rates need to be eliminated.

Second, staff is able to achieve preferential and discriminatory rates by utilizing ratios based upon “Equivalent Meter Capacity.”⁶ Thus “the minimum or base system development charge is established for a single-family residential customer (and)...the ratio of the safe operating capacity of

³ See page 9 of the 2/6/2019 Board packet.
⁵ Staff labels these water meter ratios as a “Capacity Adjustment Factor” (“CAF”).
various sizes of meters, compared to the capacity of (the single-family residential customer’s)...meter, (is) ...used to determine appropriate charges for the larger meter sizes.”

“While capacity ratios for larger meters can be computed, the use of such ratios for larger meters may...not provide a true indication of the potential demand requirements of the larger meters,” rendering IVGD’s CAF unfair. Thus ratios based upon a water customer’s meter size need to be changed or modified.

Third, customer class. Although “It is common for water utilities to have three principal customer classes [(1) residential, (2) commercial, and (3) industrial]...many systems...have customers with individual water-use characteristics, service requirements, or other factors that differentiate them from other customers with regard to cost responsibility” which makes these customer classes inadequate. Here it is unfair for residential customers to cross-subsidize the water rates assessed to IVGD’s recreational facilities. Thus these customers should have a separate class designation.”

Finally, staff have been and are currently collecting sewer capital improvement charges (“CICs”) for phase II of the effluent pipeline project. Yet it is not restricting the expenditure of those monies expressly for that project. As a result, and just like social security for those just entering the workforce, funding for this project is never going to be realized, and the additional CIC charges water customers have been paying since 2011 will never sunset. The Board needs to “get into the weeds” to understand how staff’s water/sewer rate model works so it can identify and remedy its unjust, unreasonable and preferential aspects. And that’s the purpose of this written statement.

With This in Mind, Let’s Review the Facts IVGD Staff Have Glossed Over That Go to the Heart of Their Proposed Water/Sewer Rate Increases:

Both Water and Sewer Rates Are Made Up of Three Main Components:

- Fixed (aka “ready to serve”) charges, variable charges (based upon the units of water consumed/effluent discharged and denoted in “units” where 1,000 gallons of water use = 1 ‘unit’), and capital improvement charges” or CICs [aka “funds (for) the replacement of water and sewer infrastructure”].

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6 See pages 324-325 of the American Water Works Association (“AWWA”) Manual of Principles of Water Rates and Charges – M1, 6th Ed. (2012) [“the AWWA Manual”]. According to staff (see pages 20-21 of the 1/23/2019 Board packet), this manual “assists all water agencies in developing and implementing rate structures...The District has a long history...of using the principles in this...manual for determining the type of rate structure that we have...It is important to know that the rate structure utilized by the District is (allegedly) a best practice supported by the AWWA and is similar to water rate structures across the United States.” Since this manual differs (where noted) from what staff have spoon fed to the Board and the public, I will make frequent reference to those differences.

7 See page 76 of the AWWA Manual.

8 See page 21 of the 1/23/2019 Board packet.

9 See Exhibit “A,” page 47, to the current water Ordinance No. 4, “Schedule of Water Service Charges” [https://www.yourtahoeplace.com/uploads/pdf-public-works/Ordinance_4_-_2018_-_Approved_Resolution_1862.pdf (attached as Exhibit “B” to this written statement)], as well as
**Fixed charges** represent the “costs that are incurred to staff, operate and maintain our (water and sewer) system(s, district wide) prior to delivering any water or treating any wastewater.”

**Variable charges**, whether they be associated with water or sewer, represent “the cost(s) to pump (water) out of Lake Tahoe, treat...and deliver it to the customer.”

**CICs** represent the costs to “replace...infrastructure...based on funding the costs of the five-year capital improvement plan.”

Since Both Set of Rates Are Principally Based Upon What Staff Calls a CAF Ratio, the Board and the Public Need to Understand Exactly What This Term Means, and How it is Applied: Exhibits “B” and “C” to this written statement both reference a CAF. The CAF is based upon the diameter of a customer’s water supply line. But for residential customers (all of whom are assigned a CAF of “1.0”), the larger the diameter, the greater the CAF ratio. Thus a customer with a ¾” water meter is assigned a CAF of “1.0.” And a customer with a 10” water meter is assigned a CAF of “76.65.” Staff’s rationale for assigning CAF numbers is that hypothetically, rather than actually, a customer with a 10” water meter is capable of squeezing “76.65” times the volume of water in a given time period, a customer with a ¾” water meter is capable of squeezing. But as the reader will see, since over 60% of residential water/sewer customers are vacation/second home owners, they rarely if ever use the hypothetical volume of water that can be squeezed through their water meters. Even when that volume of water is consumed, it is not sustained continuously as it is for Diamond Peak, the Championship Golf Course, the Mountain Golf Course, the Hyatt Hotel and other similar “big ticket” users.

**How the CAF Works:** The CAF is used to determine a water/sewer customer’s monthly fixed charges. Fixed monthly water (currently $11.23) and sewer (currently $18.30) charges are multiplied by the CAF. Therefore a water customer with a CAF of “1.0” pays $11.23/month in fixed charges. A water customer with a CAF of “76.65” pays $860.78 (“76.65” times $11.23) in monthly fixed charges.

Excess water/sewer charges come into play once a customer exceeds his/her/its monthly water allotment. And again the CAF comes into play. That allotment is calculated by multiplying 20,000 gallons of water in a billing period by the CAF (aka “Tier 1 excess water charges”). Once a

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10 See page 22 of the 1/23/2019 Board packet.

11 According to Exhibit “C,” “variable sewer costs...are based on monthly water use.”

12 According to page 323 of the AWWA Manual, this is another name for an “Equivalent Meter Ratio.”

13 This is the number that GM Pinkerton, his predecessors and staff regularly tout.
customer uses 60,000 gallons of water multiplied by the CAF in a billing period, he/she/it is assessed “Tier 2 excess water charges”\textsuperscript{14}.

The CAF is also used to determine a water/sewer customer’s monthly CICs\textsuperscript{9}. Monthly sewer (currently $14.80) and sewer (currently $30.70) CIC charges are multiplied by the CAF. Therefore a water customer with a CAF of “1.0” pays $14.80/month in CICs. And a water customer with a CAF of “76.65” pays $1,134.42 (“76.65” times $14.80)/month in CICs.

**Because Application of the CAF is Flawed, So Are Essentially All of Staff’s Proffered Component Water Rates:** According to page 325 of the AWWA Manual, “while capacity ratios for larger meters can be (and in IVGID’s case is) computed, the use of such ratios for larger meters may or may not provide a true indication of the potential demand requirements of the larger meters.” And here it does not “a reasonable indicator for the actual capacity use of (IVGID’s high use) customer(s) because some)...customer(s) with a larger connection size (namely IVGID)...use far more capacity.”\textsuperscript{15} Therefore “developing equivalent capacity ratios specific to a particular utility and its system characteristics is normally desired, as opposed to using a standardized table of meter equivalences”\textsuperscript{16} such as IVGID’s CAF ratio. One way to do this would be for IVGID “to review capacity use of customers with larger connections after a specified period of time after which a baseline of historical usage has been established. With this review (would) come the opportunity to true-up (charges)...based on the baseline consumption data.”\textsuperscript{15} But that’s not what staff do and as a result, our CAF is flawed.

To demonstrate the unreasonableness, the Board needs to know data staff has intentionally omitted from its current rate study. For instance, the median residential user’s monthly water consumption/sewer disposal and the rates associated therewith, compared to IVGID’s/other commercial users’ consumption/disposal and the rates associated therewith. So let’s get these facts on the table, shall we\textsuperscript{17}?

\textsuperscript{14} See ¶5 of Exhibit “B” to this written statement.

\textsuperscript{15} See pages 274-275 of the AWWA Manual.

\textsuperscript{16} See page 325 of the AWWA Manual.

Fixed Charges: The median residential user’s 2018 monthly Water Utility bill totaled $39.79\textsuperscript{18}. Of this sum, $30.84 represented fixed charges ($3.76 in customer account fees, $11.23 base charges, $14.80 in CICs and $1.05 in defensible space\textsuperscript{19}). Since the number of units of water consumed per user varies, no portion of those variable charges is included in the fixed charge portion\textsuperscript{20}. Therefore the additional $8.95/month in the median residential user’s monthly water charges ($39.79 less $30.84) represented variable water actually consumed (in this case 5,967 gallons billed at an average charge of $1.50/1,000 gallons/usage).

Because staff have represented that fixed water costs are those “incurred to staff, operate and maintain our (water) system(s, district wide) prior to delivering any water,”\textsuperscript{8} and the reader will see below (under the water CIC discussion) the enormous infrastructure required to deliver water to itself (including Diamond Peak and its two golf courses) and its commercial customers, the fixed water costs assessed to commercial customers are disproportionate when compared to those of the median residential customer. Thus contrary to staff’s representations, these costs have not been “balanced... equitably among (all) user classes.”\textsuperscript{4}

Variable Charges: Notwithstanding, the actual charges for residential water customers’ variable water use increases (called “excess water charges”): 62% at 20,000 gallons consumed/month [from $1.50/1,000 gallons to $2.43/1,000 gallons (Tier 1)]; and, 148.67% at 60,000 gallons consumed/month [from $2.43/1,000 gallons to $3.73/1,000 gallons (Tier 2)]\textsuperscript{21}. Yet because of the way fixed charges for commercial customers’ water costs are calculated (see the “How the CAF Works” discussion above), essentially none is assessed excess water charges\textsuperscript{22}.

\textsuperscript{18} See page 73 of the 1/24/2018 Board packet.
\textsuperscript{19} See page 57 of the 1/23/2019 Board packet.
\textsuperscript{20} See page 71 of the 1/24/2018 Board packet.
\textsuperscript{21} See page 149 of the 4/11/2018 Board packet as well as Exhibit “A” attached to this written statement.
\textsuperscript{22} If a commercial water customer has a 3” water supply line, he/she/it is assigned a CAF of “10.” This means he/she/it is not assessed excess water charges as long as his/hers/its monthly consumption does not exceed 200,000 gallons (20,000 gallons times “10”). If he/she/it has a 6” water supply line, then he/she/it is assigned a CAF of “33.33” which means he/she/it is not assessed excess water charges as long as his/her/its monthly consumption does not exceed 666,600 gallons (20,000 gallons times “33.33”). And if he/she/it has a 10” water supply line, he/she/it is assigned a CAF of “76.65” which means he/she/it is not assessed excess water charges as long as his/her/its monthly consumption does not exceed 1,533,000 gallons (20,000 gallons times “76.65”). Since essentially no commercial water customer other than IVGID ever approaches these threshold consumption levels, essentially none is assessed an excess water charge. If he/she/it were, then his/her/its monthly charges would greatly exceed his/her/its fixed charges.
And because of the “Public Service Recreation” exemption IVGID has created for itself\(^{23}\), its recreation facilities which consume massive amounts of water in excess of their monthly allotment before excess water charges kick in, none “are not subject to excess water charges.”

Therefore because of the way excess water charges are calculated, combined with the “Public Service Recreation” exemption, no commercial water customer pays his/her/its proportional fair share for his/her/its actual water use, compared to residential water customers.

**Uniform Rates:** “Uniform rate(s)…imply…that all increments of water provided are associated with the same unit cost of service.”\(^{24}\) Thus “potential cost-of-service differentials among customer or service classifications are not recognized when designating a uniform rate applicable to all general water service customers.”\(^{25}\) Yet here that’s exactly what has happened. Excess water rates are not applicable to all of IVGID’s water customers. Which is why excess water rates should either be eliminated, or applied across the board to all water customers.

**CICs:** Since CIC charges are calculated the same way as fixed charges, the monthly base charge is multiplied by the CAF. Since all residential customers are assigned a CAF of “1,”\(^{26}\) $14.80/month represents their monthly water CIC based upon monthly median water consumption (at least for

Consider the commercial water customer with a CAF of “10.” If he/she/it consumed 200,000 gallons of water/month, the first 20,000 gallons would be charged $30 (at $1.50/1,000 gallons); the next 40,000 gallons would be charged $97.20 (at $2.43/1,000 gallons); the next 140,000 gallons would be charged $522.20 (at $3.73/1,000 gallons); and the grand total would be $649.40. Now compare this amount to this customer’s actual monthly fixed charge of $112.30. Hopefully the reader can see that staff’s propaganda that commercial water customers (including IVGID) are paying their fair share of fixed costs is a lie. To further make the point, let’s consider the commercial water customer with a CAF of “76.65.” If he/she/it consumed 1,533,000 gallons of water/month, the first 20,000 gallons would be charged $30 (at $1.50/1,000 gallons); the next 40,000 gallons would be charged $97.20 (at $2.43/1,000 gallons); the next 1,473,000 gallons would be charged $5,494.29 (at $3.73/1,000 gallons); and the grand total would be $5,621.49. Now compare this sum to this customer’s actual monthly fixed charge of $860.78. You see the preferential effect to residential customers’ detriment, and IVGID’s benefit. *Is this an example of “balancing” costs equitably among user classes* staff have represented to the Board and the public (see page 29 of the 1/23/2019 Board packet)?

\(^{23}\) See Note 2 to Exhibit “B” attached to this written statement as well as §2.40 at page 13 of Ordinance No. 4. This section declares that “accounts where the primary irrigation water use is for outdoor parks and recreation accessible to the public...includ(ing) parks and recreation facilities, golf courses, snowmaking...are not subject to excess water charges.”

\(^{24}\) See page 97 of the AWWA Manual.

\(^{25}\) See page 97 of the AWWA Manual.

\(^{26}\) See Note 1 on Exhibit “B” to this written statement.
December 2018) of 1,909 gallons. But for the commercial customer with a CAF of “10,” who can consume up to 200,000 gallons/month without being assessed excess water charges, his/her/its monthly water CIC charge is $148. And for the commercial customer with a CAF of “76.65,” who can consume many millions of gallons/month, his/her/its monthly water CIC charge is $1,134.42.

What are the water infrastructure requirements commercial customers like IVGID require? How about up to “40 million gallons of water for snowmaking use (just) in a season” of 2-3 months just at Diamond Peak? Or IVGID’s two Lake Tahoe golf courses, each of which “typically uses 75 million gallons per year in irrigation water?” Or “water…pumps” capable of pumping “as much as 3,000 gallons (of water)/minute” (half of IVGID’s system wide capabilities from Lake Tahoe), just for Diamond Peak snowmaking? Or “water…tanks” capable of storing “as much as “3 million gallons” of water just for Diamond Peak snowmaking?” Or a water system that can feed sixty-five percent (65%) of the “4.6 million gallons used community wide…during (just one) 24-hour period (at) Diamond Peak for its snowmaking?” Or the staff coordination necessary for your Public Works “water staff to stay…in close contact with…Diamond Peak’s snowmaking staff?” If the Board compiles these and the many other undisclosed requirements staff are well aware of yet do not share with the Board and the public, to those of your median residential customer, it should come to the conclusion commercial customers’ demands on the public water system are legion compared to those of the median residential customer. Given the median residential customer uses 1,909 gallons of water per month in the winter season, and Diamond Peak uses 40,000,000 gallons in just 2-3 months for snowmaking, why is IVGID only being assessed a maximum of 76.65 times what the residential customer is charged for water CICs? Is this an example of “balancing costs equitably among user classes” staff have represented to the Board and the public (see page 29 of the 1/23/2019 Board packet)?

Similarly, Because Application of the CAF is Flawed, So Are Essentially All of Staff’s Proffered Component Sewer Rates:

27 Look at your December 2018 water/sewer bill. Mine says “consumption for median single family user during current month: 1909.” What does yours say?

28 According to the December 2018 Public Works Newsletter (see pages 466-467 of the 2/6/2019 Board packet), “during a cold spell this winter, Diamond Peak used nearly 3 million gallons (of water) in a 24 hour period;” “Diamond Peak can use (up to)...40 million gallons of water for snowmaking use in a season;” and, “a golf course at Lake Tahoe (and remember, IVGID has two of them) typically uses 75 million gallons per year in irrigation water.”

29 See page 467 of the 2/6/2019 Board packet.

30 40,000,000 gallons of water consumed over a 3 month period averages roughly 13,333,333 million gallons/month. Given the median residential water customer consumes 1,909 gallons of water/month during the same time of the year, Diamond Peak’s demands are nearly 7,000 times more than those of the median residential water customer.
Fixed Charges: The median residential user’s 2018 monthly Sewer Utility bill Totals $62.22. Of this sum, $52.76 represented a fixed charge ($3.76 in customer account fees, $18.30 base charges, and $30.70 in CICs), assuming the discharge of no effluent whatsoever. Because IVGID does not measure the effluent a sewer utility customer discharges into the public’s sewer system, variable monthly sewer costs are tied to the user’s actual water consumption, and it is calculated at $3.10/1,000 gallons. Therefore the additional $9.46 in the median residential sewer customer’s monthly utility bill ($62.22 less $52.76) represented estimated discharged sewer effluent (in this case 3,051 gallons of water billed at an average charge of $3.10/1,000 gallons).

Because staff have represented that fixed sewer costs are those “incurred to staff, operate and maintain our (sewer) system(s, district wide) prior to...treat ing any wastewater,” the reader can see the enormous infrastructure required to deliver sewer treatment services (based upon water consumption) to commercial customers including IVGID, and those fixed sewer costs to commercial customers are disproportionate when compared to those of the median residential customer. Thus contrary to staff’s representations, these costs have not been “balanced...equitably among (all) user classes.”

Variable Charges: Since sewer variable charges are based upon water consumption, I and others I know find it disingenuous that staff are not able to measure effluent discharged into the public’s sewer system, the way they are able to measure water consumption. After all, doesn’t GM Pinkerton frequently volunteer that he is able to determine the number of people in town based upon the number of toilet flushes?

CICs: When IVGID is placing enormous demands on the public’s sewer system compared to those of the median residential customer (perhaps as much as 7,000 times (measured in water consumption)), yet it is paying no more than 76.65 times the sewer CIC costs the residential customer pays, this is not “an example of “balancing sewer CIC) costs equitably among user classes” as staff have represented to the Board and the public.

Distributing Costs to Customer Classes: “The ideal solution to developing rates for water utility customers is to assign cost responsibility to each individual customer served and to develop rates that reflect that cost. Unfortunately, it is neither economically practical nor often possible... (Notwithstanding), the cost of providing service can reasonably be determined for groups or classes of

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31 See page 58 of the 1/23/2019 Board packet.
32 See Note 4 on Exhibit “B” to this written statement.
33 During holiday periods, Diamond Peak regularly accommodates more than 4,000 skiers and many hundreds of additional non-skiers per day. If one compares their daily demands on the public’s sewer system to those of the median residential customer (especially when more than 60% of them are absent second/vacation homeowners), it doesn’t take long to see why a fixed charge of only “33.33” or “76.65” times that of the median residential customer is grossly disproportionate and inequitable.
34 See page 75 of the AWWA Manual.
customers that have similar water-use characteristics and for special customers having unusual or unique water-use or service requirements. *Rate making endeavors to assign costs to classes of customers in a nondiscriminatory, cost responsive manner so that rates can be designed to closely meet the cost of providing service to such customer classes.*"\(^{34}\)

"It is common for water utilities to have three principal customer classes: (1) residential, (2) commercial, and (3) industrial."\(^{35}\) Here IVGID in effect has two customer classes; residential, and commercial\(^{36}\). *"Many systems...have customers with individual water-use characteristics, service requirements, or other factors that differentiate them from other customers with regard to cost responsibility. (In these instances,) these customers should have a separate class designation."*\(^{35}\) "Water utilities often provide service to certain special classes of customers. (One) such class (is)...irrigation."\(^{35}\)

*Irrigation is characterized by the relatively high demands it places on the water system... Establishment of a separate class designation is warranted when separate metering for...irrigation (as is the case here) is available, as is often the case for...parks, fields, and golf courses...where such loads are significant in the system...The significant demands caused by irrigation (should) be recognized and reflected in the cost to provide this service.*\(^{37}\)

**Monthly Defensible Space Costs:** In addition to the above-components to a water customer’s monthly bill, he/she/it is assessed an additional $1.05 for defensible space\(^{9}\). Public utility rates are supposed to be based upon the actual costs the utility incurs in providing the service to its customers. It is not entitled to make a profit on those services, nor to charge for any other costs other than those actually incurred to provide that service. "Defensible space" has nothing to do with a cost IVGID incurs to make water available to its customers. Rather, it is a cost it incurs to create a protective "halo" in the forests surrounding Incline Village/Crystal Bay to protect these communities from a catastrophic fire such as the 2007 Angora Fire which devastated South Lake Tahoe.

Moreover, IVGID has no power to levy fees to "eliminate fire hazards existing within the district" nor to "clear public highways and private lands of dry grass, stubble, bushes, rubbish and other inflammable material which in its judgment constitute a fire hazard" [see NRS 318.1181(2)(3)]. The reasons are, at least fivefold. First, IVGID is not "a district created wholly or in part for the purpose of furnishing fire protection." Those districts are the only ones that can exercise these powers.

Second, the only basic powers a general improvement district ("GID") may exercise are those stated in its initiating or supplemental (NRS 318.077) ordinances as long as "one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter (318) designated therein"

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\(^{34}\) See page 76 of the AWWA Manual.

\(^{35}\) See page 24 of the 1/23/2019 Board packet. Although staff suggests "IVGID Facilities" and "IVGID Snowmaking" as separate customer classes, in truth they are not. IVGID's facilities are assessed the same as are commercial facilities.

\(^{37}\) See page 77 of the AWWA Manual.
[NRS 318.055(4)(b)]. Although furnishing facilities for the protection from fire is a permissible GID power [NRS 318.116(17)], it has never been granted to IVGID by the Washoe County Board of Commissioners, either in its initiating ordinance, or through “proceedings...by the board of county commissioners, similar ly, as nearly as may be, to those provided for the formation of the district” (NRS 318.077).

Third, IVGID has never adopted a NRS 308.030(1) service plan. Because NRS 318.077 mandates that a GID “board shall obtain in connection with each...additional basic power a modified service plan...in a manner like that provided for an initial service plan required for the organization of a district in the Special District Control Law,” and here none has been obtained, IVGID has no power to be exercising the basic power to furnish facilities for the protection of fire.

Fourth, the power to furnish facilities for the protection from fire is not a NRS 318.210 implied power because Dillon’s Rule, which is applicable to IVGID [Ronnow v. City of Las Vegas, 57 Nev. 332, 368, 65 P.2d 133 (1937)], instructs that should there be “any fair, reasonable, substantial doubt concerning the existence of power it must be) resolved by the courts against the (municipal) corporation, and the power (be) denied” (Id., at 57 Nev. 343).

Fifth, local property owners are already paying the North Lake Tahoe Fire Protection District (“NLTFPD”) ad valorem taxes so it can provide defensible space services (check your tax bill). Why then the requirement IVGID’s water customers pay the NLTFPD a second time under the label “defensible space?”

Here IVGID has discovered another disingenuous means of charging local property owners another fee for services it has no power to furnish. And for simplicity purposes, IVGID has simply incorporated it into its water rates/charges.

There’s another reason why this charge is improper. And that’s because it is not assessed uniformly against all properties in Incline Village/Crystal. Article 4, section 21 of the Nevada Constitution mandates that “in all cases where a general law can be made applicable, all laws shall be general and of uniform operation. Here IVGID’s rates/charges which assess involuntary defensible space charges are not uniform because there are unimproved lots in Incline Village/Crystal Bay which are not receiving water services from IVGID. This means they are not being sent bills which in part, include defensible space charges.

Based Upon the Above, Here Are My Recommended Structural Changes to the Way Components to Our Water/Sewer Fees Are Calculated:

1. Variable Water Charges Should be Eliminated Altogether Because it is Unfair to Charge Approximately 120 Residential Customers a Surcharge For Their Consumption of More Than 20,000 Gallons of Water in a Billing Period, Yet to Not Charge Commercial Customers the Same Surcharge When They Consume Many Times What is Consumed by the Residential Customer;

2. Alternatively, Variable Water Charges Should be Applied Uniformly to All Customer Classes at the Same Tier 1 and Tier 2 Rates Assessed Residential Customers;
3. Defensible Space Charges Should be Removed From Customers’ Water Bills as They Have Zero to Do With the Cost IVGID Incurs to Provide Water Services;

4. The Water Public Service Recreation Exemption Should be Eliminated Altogether Because it Represents an Unreasonable Preference Which Primarily Benefits IVGID – the Entity Which Has Adopted It;

5. Variable Sewer Charges Should be Eliminated Altogether Because IVGID Has No Means of Measuring Any Customer’s Discharge Into the Public’s Sewer System;

6. A New Customer Class (IVGID Recreational Venues) Should be Created Which More Fairly Apportions the Public’s Costs to This Class of Users;

7. Commercial Customer’s Fixed Water/Sewer Charges Should be Increased Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters; and,

8. Commercial Customer’s Water/Sewer CICs Should be Increased Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters.

Only by making the structural changes suggested, can the Board make its water/sewer rates just, fair, non-discriminatory and non-preferential.

Another Proposed Modification to Our New Water Rates/Charges; Backflow Prevention Device Inspection/Testing Fees: “To protect (the) public(‘s) potable water supply...from the possibility of contamination or pollution by isolating within the customer’s internal distribution system...such contaminants or pollutants which could backflow into the public water systems” [see ¶16.01(A)(1) of Ordinance No. 4], ¶¶16.01(B) and 16.03(A)(1) mandate that an approved backflow prevention device be installed on all properties’ water service connections. ¶16.03(D)(1) mandates yearly certified inspections and operational tests. Exhibit “C” to Ordinance No. 4 is a “Miscellaneous Fee Schedule.” And one of those fees is a $60 backflow device inspection. Notwithstanding “the district reads approximately 4,450 meters...covering 7,966...sewer...customers”38, ¶16.03(A)(1) of Ordinance No. 2 declares that “no water service connection to any premises may be installed or maintained by the District unless the water supply is protected as required by State laws and regulations and this ordinance (with a)...backflow prevention assembly,” and these 7,996 sewer customers have many more than 1,700 backflow prevention devices installed on their properties serving systems for hydronic space heating, in-door sprinklers, and landscape irrigation, page 36 of the 1/23/2019 Board packet tells us IVGID staff perform only 1,700 tests annually which generates approximately $105,000 of revenue. How come the difference? Because ¶16.03(D)(1) allows “inspections and tests (to)...be performed by...certified tester(s) approved by the District.” And because third party testers charge less for inspecting and testing than IVGID, naturally, IVGID’s water customers do their testing elsewhere.

Given public utilities are not entitled to charge more than their actual costs to provide utility services, why does IVGID charge more for annual inspecting/testing of backflow prevention devices than the competition? Is it another impermissible profit source because of staff’s preying off helpless victims? Or, why does IVGID maintain staff and equipment to perform backflow prevention inspecting/testing if this work can be provided by the private sector for less? After all, our GM constantly mis-informs the Board and the public that IVGID staff are available to perform services such as these for less cost than comparable private sector sources. Either Mr. Pinkerton is mistaken, or IVGID is making an impermissible profit on the backflow prevention device inspections/testings it furnishes to its customers.

Thus either way, either IVGID should get out of the backflow prevention device inspecting/testing business, or a rate study should be conducted by a qualified third party and its rates be reduced. If the private sector can do this job for less, then IVGID staff should be capable of doing the same thing for less.

Another Proposed Modification to Our New Water Rates/Charges; Designating Sewer CICs Assessed/Collected Expressly For the Effluent Export Pipeline Project, Phase II as Restricted Reserves: According to page 22 of the 1/23/2019 Board packet, “the effluent export project has been the major driver in raising...sewer rates (since) the district currently does not have sufficient reserves to fund this project.” Staff tells us that “large sewer CIP rate increases occurred in 2011, 2012, 2013 and 2014 to raise the necessary capital funds for this project.” In point of fact, in addition to other CIP components of past sewer rates’ CICs, IVGID has assessed and is currently assessing water customers, $14,774,338 since 2010/11 ($2,000,000/year from 2012-2017 as well as 2018-19, and $1,000,000 for 2017-18), supposedly as a CIP reserve to fund this $23,000,000 project. Yet according to staff, $4,811,782 of these monies have been spent on this project. They have not!

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39 IVGID budgets more/year for water/sewer CIPs than simply the yearly reserve to fund the Effluent Export Pipeline Project, Phase II. For instance, for 2018/19 staff budgeted $4,913,000 in CIP revenue to fund a like amount of CIP expenses. This was broken down as follows: $685,674 in shared CIPs; $1,310,000 in water CIPs; $2,680,000 in sewer CIPs [see pages 1-2 of the 2018/19 CIP Budget (https://www.yourtahoeplace.com/uploads/pdf-ivgid/FY_18-19_5-year_CIP_Book_-_FINAL_5.23.18.pdf) - copies of these pages are attached as Exhibit “D” to this written statement] and presumably another $237,326 in grants given this number is “net of grants.” This number was well in excess of the $2,000,000 budgeted just for the Effluent Export Pipeline Project, Phase II.

40 See page 49 of the 1/23/2019 Board packet. A copy of this page is attached as Exhibit “E” to this written statement, and I have placed an asterisk next to the $14,774,338 number.

41 See pages 17 of the 1/23/2019 Board packet, as well as page 32 of the 1/24/2018 Board packet. I have attached a copy of the latter page together with an asterisk next to the portion which evidences this factual information, as Exhibit “F” to this written statement.

42 This figure is a pipedream. First of all, this is an “estimate of (only) probable construction costs” that was made nearly seven years ago, on May 30, 2012 (a copy of the estimate is attached as Exhibit “G”
Moreover, staff have admitted they intend to charge water users an additional $2,000,000/year to fund the subject project, for at least the next four plus fiscal years.\textsuperscript{43}

Moreover still, \textit{what exactly is the Effluent Export Pipeline Project, Phase II?} In a different written statement I asked be attached to the minutes of the Board’s regular December 12, 2018 meeting\textsuperscript{44}, I documented in writing “exactly what tasks are encompassed within Phase II of the Effluent Pipeline Project.”\textsuperscript{45} To repeat, “the proposed project...will replace...two remaining sections...a total length of approximately 6 miles...of 16-inch Export Pipeline.” Moreover, now that we have a very detailed “estimate of probable construction (components and) cost(s)” for this project (see Exhibit “F” to this written statement), we know exactly the scope of work included. Given no portion of this 6 miles of pipeline has been replaced, \textit{none of the nearly $5,000,000 in past sewer charges staff have assigned to the Effluent Export Pipeline Project, Phase II}\textsuperscript{46}, have been spent on any of this scope of work! In other words, this money has been robbed to pay for other endeavors.

For all these reasons, the public needs the protection of formally restricting the expenditure of these funds for the Effluent Export Pipeline Project, Phase II, \textit{as described!} In fact, I ask that all of these funds be deposited into a segregated special reserve fund for this purpose.

\textit{Doesn’t the Board See a Problem With Administering the Public’s Money Losing Recreational Facilities, While Granting Those Facilities Discriminatory Rate/Charge Preferences?} It’s a classic conflict of interest.

\textit{Unbelievably, Staff’s Rate Survey is Chock Full of More Deceitful and Misrepresented Facts. So to Clear the Record,}

to this written statement), and as we all know construction costs have increased markedly since then. Second of all, this estimate does not include all of the costs associated with replacement of this segment of pipeline (for instance, design costs were not included inasmuch as this was only a “pre-design cost estimate”). When these additional costs are added onto the estimate, we’re going to be looking at a far different number. Third of all, this estimate doesn’t include the typical 10% add-on ($3,200,000) for “construction contingencies” (see page 6 of the 1/23/2019 Board packet for an example of what I am talking about). Fourth of all, staff has demonstrated that it does not know how to estimate accurately. The reader need only refer to item F(1) on this agenda for evidence of what I am talking about; an initial construction estimate of $85,000, and a request to appropriate $124,395 (a 46.35% shortfall) for construction of the project the subject thereof. Finally, now that our GM has revealed allocated staff costs are added to all CIPs, this project’s total cost is guaranteed to be millions of dollars more. And the longer staff wait to commence construction, such as hoping for the pipedream of TTD funding (discussed hereafter), the higher the cost is going to rise.

\textsuperscript{43} See page 44 of the 1/23/2019 Board packet.

\textsuperscript{44} See pages 136-154 of the 1/23/2019 Board packet.

\textsuperscript{45} See page 137 of the 1/23/2019 Board packet to be exact.
**TTD Funding:** At page 22 of the 1/23/2019 Board packet staff disingenuously hold out hope for a shared use bike path and IVGID’s ability to relocate phase II of the effluent pipeline project underneath. But staff fail to share with the Board and the public that TTD’s BUILD grant application was rejected on December 11, 2018. Not only is there no funding for TTD’s bike path project via BUILD grants, but there is no funding elsewhere as well. Whatever financial savings there may have been under bike path relocation has been more than offset by intervening repair and increased construction costs. In other words, another staff pipe dream.

**Program 595 Funding:** At page 22 of the 1/23/2019 Board packet staff disingenuously hold out hope for section 595 funding to offset some of the $23 million in projected pipeline replacement costs. But this program has been dead for five or more years, and IVGID hasn’t received a penny from the program during this period of time. This is the reason “the capital plan has been modified to show that we receive no funding.” Although maybe in the future some similar program may come into existence which contributes towards the cost of replacing the balance of our effluent pipeline, today, it’s another staff pipe dream.

**Conclusion:** Maybe most residents don't care about how IVGID staff repeatedly use propaganda tools to paint the picture they’re so just, transparent and require their proposed water and sewer rate increases. Maybe they don't care about how IVGID has created disproportionate and preferential rates/exemptions for itself and its favored collaborators which are subsidized by the water/sewer rates paid by residential customers. But maybe some do care.

What I have attempted to demonstrate is that residential customers continue to subsidize staff’s commercial money losing recreational business enterprises with their *ad valorem* taxes, BFFs and/or RFFs, and the user fees they are assessed to use the facilities they subsidize. But still that’s not enough! Staff use hundreds of thousands of water/sewer customers’ utility rates/charges to further subsidize those commercial money losing business enterprises.

And the next time an IVGID staff member thanks one of his/her 966 other IVGID colleagues, understand the real reasons why.

If the Board wants to make water/sewer rates just, reasonable, non-preferential, and non-discriminatory, then it needs to address the fundamentals of staff’s rate model. When it does, I predict rates will go down for the residential customer, and IVGID’s commercial business enterprises will begin paying their fair share for perhaps the very first time.

The AWWA Manual instructs that when it comes to public water/sewer rates, “a city’s first duty is to its own inhabitants who…therefore have a preferred claim to the benefits resulting from public ownership.” If that’s the case, how about making we residents priority number one, and IVGID’s disproportionate use for its commercial recreational businesses second?

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46 See https://transparentnevada.com/salaries/2017/incline-village-general-improvement-district/.
47 See page 298 of the AWWA Manual.
Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!
EXHIBIT "A"
Request to Remove Agenda Item F(1)(b) [Review, Discuss and Possible Set Water/Sewer Rate Change Public Hearing] From Consent Calendar, and Permit Aaron Katz to Present Water/Sewer Rate Presentation at the Board's Next Meeting to Provide Factual Materials Staff Have Intentionally Omitted

From: "s4@ix.netcom.com" <s4@ix.netcom.com>
To: Wong Kendra Trustee
Cc: Callicrate Tim Trustee <callicrate_trustee@ivgid.org>, Horan Phil <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>
Subject: Request to Remove Agenda Item F(1)(b) [Review, Discuss and Possible Set Water/Sewer Rate Change Public Hearing] From Consent Calendar, and Permit Aaron Katz to Present Water/Sewer Rate Presentation at the Board's Next Meeting to Provide Factual Materials Staff Have Intentionally Omitted
Date: Feb 6, 2019 2:14 PM

Dear Chairperson Wong and Other Honorable Members of the IVGID Board:

I ask Item F(1)(b) on the Consent Calendar be transferred to the General Business Calendar. Here's why:

1. This item is described as "review, discuss and possibly set the date/time for a Public Hearing to consider proposed water/sewer rate increases. However, as staff know, there can be no discussion of items on the Consent Calendar. If there is to be a discussion, it must take place on the General Business Calendar.

2. Moreover, Policy No. 3.1.0.15 states that "any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting." Therefore it only takes one member of the Board.

3. Stated differently, Policy No. 3.1.0.15 states that "a unanimous affirmative vote shall be (required) as a favorable motion and approval of each individual item included on the Consent Calendar." Therefore it only takes one member of the Board to NOT vote in favor of this item being on the Consent Calendar.

4. Have any of you read the AWWA Manual on Principles of Water Rates and Charges upon which staff allegedly rely? Well I have, and I have some additional facts to present to the Board that Mr. Pomroy has been less that forthright in sharing. In other words, he has presented "cherry picked" facts which support his agenda.

5. Have you any of you read the AWWA Manual on Principles of Sewer Rates and Charges ("the Manual")? Guess what? THERE IS NO SUCH MANUAL. I don't know upon what Mr. Pomroy relies to support his sewer rate study, but I suspect it's nothing other than his subjective justification.

6. And to add to the unfairness, staff is again ACTIVELY CONCEALING PUBLIC RECORDS which reveal the deficiencies in its rate structure. Without these records, how can the Board possibly understand these deficiencies. The Board needs to step in and force staff to share the truth with the public. Because right now, Mr. Pomroy DOES NOT SPEAK THE ENTIRE TRUTH.

7. As I shared with the Board at its last meeting, there are a number of structural deficiencies in the methodology relied upon by staff in support of its rate study. Mr. he Board and the public need to learn all the facts. And for this reason, I ask I be given the same opportunity to present those facts that Mr. Pomroy was given to cherry pick.

8. "Water rates are considered fair and equitable when each customer class pays the costs allocated to the class and...cross-class subsidies are avoided. While recovery of the full revenue requirement in a fair and equitable manner is a key objective of a utility using a cost-of-service rate making process, it is often not the only objective...Promot(n)g...fairness in... apportion(ing)...total costs of service among the different rate payers" are also key objectives. So is "avoid(ing)...undue discrimination (subsidies) within...rates."[1].

9. As I pointed out in my written statement to the last meetings' minutes (see pages 459-467 of the Board packet), Diamond Peak uses over 1,500 times the water the median residential customer uses, just for snowmaking. Yet Diamond Peak is not assessed any excess water charges whereas about 120 residential customers are. This is manifestly unfair.

10. Notwithstanding Diamond Peak uses over 1,500 times the water the median residential customer uses, just for snowmaking, Yet it only pays 76.85 times the capital improvement costs the residential customer pays. Given the residential
customer doesn’t need the water infrastructure Diamond Peak needs, and he/she actually uses a pittance of the water Diamond Peak does, just on snowmaking, staff’s rate structure is manifestly unfair.

11. To eliminate the unfairness staff proposes, here is my list of proposed structural changes that staff don’t even talk about:

1. Eliminate Variable Water Charges Altogether Because it is Unfair to Charge Approximately 120 Residential Customers a Surcharge For Their Consumption of More Than 20,000 Gallons of Water in a Billing Period, Yet to Not Charge Commercial Customers the Same Surcharge When They Consume Many Times That Consumed by the Residential Customer;
2. Alternatively, Apply Variable Water Charges Uniformly to All Customer Classes at the Same Tier 1 and Tier 2 Rates Assessed Residential Customers;
3. Eliminate Defensible Space Charges Assigned to Customers’ Water Bills As They Have Zero to Do With the cost I/VGID Incurs to Provide Water Services;
4. Eliminate the Water Public Service Recreation Exemption Altogether Because it is an Unreasonable Preference Which Primarily Benefits I/VGID – the Entity Which Adopts Rates;
5. Eliminate Variable Sewer Charges Altogether Because I/VGID Has No Means of Measuring Any Customer’s Discharge Into the Public’s Sewer System;
6. Create a New Customer Class (I/VGID Recreational Venues) Which More Fairly Apportions the Public’s Costs to This Class of Users;
7. Increase Commercial Customer’s Fixed Water/Sewer Charges Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters; and,
8. Increase Commercial Customer’s Water/Sewer CICs Based Upon Their Actual Water Consumption Rather Than the Diameter of Their Water Meters.

12. The Manual makes clear that “a utility is presented with a major challenge when it sets out to select a rate structure that is responsive to the philosophy and objectives of both the utility and its community...The process of selecting the most appropriate rate structure for a particular utility and its customers is not simple. (Rather,) the selection is complex because there are so many types of rate structures...Even within a single utility, because of these objectives, each customer class may not use the same rate structure...For these reasons, a ‘one size fits all’ approach to rate structures may not be appropriate within a utility (like Incline Village/Crystal Bay) that has...diverse...usage patterns.”[2] Only “when diverse and competing objectives are well understood and evaluated, (does) a utility have the opportunity to design a rate structure that does more than simply recover its costs.”[3]

13. I suspect few if any on the Board are sufficiently familiar with staffs’ existing rate structure and how it is manifestly unfair. This is another reason why a formal public hearing should not be set and I should be given the opportunity to present facts Mr. Pomroy has intentionally chosen to omit.

14. “Beneficiaries of a service should pay for that service...(Thus) the level of service charges should be related to the cost of providing (that) service...services provided for the benefit of a specific individual, group, or business should not be paid from general utility revenues;”[4] and, “unjust or unreasonable discrimination...renders a rate or charge unreasonable.”[5]

15. “Water rates are considered fair and equitable when each customer class pays the costs allocated to the class and...cross-class subsidies are avoided. While recovery of the full revenue requirement in a fair and equitable manner is a key objective of a utility using a cost-of-service rate making process, it is often not the only objective...Promoting...efficient resource use (and)...fairness in...apportionment...total costs of service among the different rate payers” are also key objectives. So is “avoiding...undue discrimination (subsidies) within...rates.”[6]

16. “The ideal solution to developing rates for water utility customers is to assign cost responsibility to each individual customer served and to develop rates that reflect that cost. Unfortunately, it is neither economically practical nor often possible... (Notwithstanding,) the cost of providing service can reasonably be determined for groups or classes of customers that have similar water-use characteristics and for special customers having unusual or unique water-use or service requirements. Rate making endeavors to assign costs to classes of customers in a nondiscriminatory, cost responsive manner so that rates can be designed to closely meet the cost of providing service to such customer classes.”[7]

17. “It is common for water utilities to have three principal customer classes: (1) residential, (2) commercial, and (3) industrial...Many systems...have customers with individual water-use characteristics, service requirements, or other factors that differentiate them from other customers with regard to cost responsibility. These customers should have a separate class designation.”[8] “Irrigation is characterized by the relatively high demands it places on the water system...Establishment of a separate class designation is warranted when separate metering for...irrigation is available, as is often the case for...parks, fields, and golf courses...where such loads are significant in the system...The significant demands caused by irrigation...can be recognized and reflected in the cost to provide this service.”[9] Staff have not created a separate customer class for I/VGID’s recreational venues. And because those venues place a disproportionate demand on the public’s water/sewer systems, they need to be treated differently.
18. “There is often the need to establish a minimum threshold or base level of cost or demand for service against which the costs or demands of larger customers can be measured. A convenient and readily available parameter for this purpose is the size of the customer’s water meter...There are different methodologies for measuring or computing equivalent rates for larger meters as compared to a...standard base size meter as equivalent rates. The two most commonly used ratios in the water rate-making industry are (1) equivalent meter-and-service cost ratios and (2) equivalent meter capacity ratios...Meter capacity ratios...are most often used when estimating potential capacity or demand requirements for customers on the basis of the size of the water meter. The determination of system development charges or impact fees for meters greater than the base size, where potential customer demand is assume to be proportional to meter size, is an example of the use of meter capacity ratios. Meter capacity ratios may also be appropriate in the design of the service charge portion of the general rate schedule when such charges include some recovery of fixed-capacity related costs or readiness-to-service related costs.”[10] This is the type of rate methodology staff utilizes. It is called “Capacity Adjustment Factor” or “CAF.”

19. “One of the disadvantages of the meter size approach is that for larger meters, the meter capacity may not be a reasonable indicator for the actual capacity use of the customer...Customer(s) with a larger connection size...may use far more capacity...Some utilities...provide for the ability to review capacity use of customers with larger connections after a specified period of time after which a baseline of historical usage has been established. With this review comes the opportunity to true-up (charges)...based on the baseline consumption data”[11]. IVGID’s use of Equivalent Meter Capacity Ratios is manifestly unfair to single family residential customers in general, and IVGID’s single family residential customers in particular (because 2/3 are vacation or second homeowners).

20. For all these reasons I ask a date not be set for a public hearing pertaining to changed water/sewer rates, and I be given the opportunity to present material facts omitted by staff.

Thank you for your cooperation. Aaron Katz

EXHIBIT A
Schedule of Water Service Charges

Monthly water charges are the summation of the following components:

1. Fixed Charge = $11.23 X CAF (1) X number of units.
2. Administrative / Customer Service Account Charge = $3.76 per account.
3. Capital Improvement Charge = $14.80 X CAF (1) X number of units
4. Variable Cost = $1.50 per 1,000 gallons of water use. [billed as water use charges]
5. Excess water charge(2):
   a. First Tier: Additional Cost = $0.93 per 1,000 gallons for all water use greater than 20,000 gallons X CAF(1) X number of units, in addition to the Variable Cost (#4), above.
   b. Second Tier: Additional Cost = $1.30 per 1,000 gallons for all water use greater than 60,000 gallons X CAF(1) X number of units, in addition to Variable Cost (#4) and First Tier Cost (#6a), above.
6. Defensible Space Fee = $1.05 X number of units.
   a. The defensible space fee is to pay 50% of the IVGID share of costs for fuels treatment on IVGID lands that will enhance the protective boundary from destructive wildfire that could threaten the communities of Incline Village and Crystal Bay. The other 50% share of this cost is paid by the IVGID Recreation Facility Fee.

(1) Capacity Adjustment Factor:

<table>
<thead>
<tr>
<th>Service Size for Billing Purposes</th>
<th>CAF</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Residential Customers</td>
<td>1.0</td>
</tr>
<tr>
<td>3/4&quot;</td>
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<tr>
<td>1&quot;</td>
<td>1.67</td>
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<tr>
<td>1.5&quot;</td>
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<td>2&quot;</td>
<td>5.33</td>
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<tr>
<td>3&quot;</td>
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<td>6&quot;</td>
<td>33.33</td>
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<tr>
<td>8&quot;</td>
<td>53.33</td>
</tr>
<tr>
<td>10&quot;</td>
<td>76.65</td>
</tr>
</tbody>
</table>

(2) Designated Public Service Recreation irrigation accounts are not assessed excess water charges.

Typical monthly single-family residential water service charges with no metered water use:

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Water Base Rate (#1)</td>
<td>$9.50</td>
<td>$9.55</td>
<td>$9.74</td>
<td>$10.00</td>
<td>$10.65</td>
<td>$11.23</td>
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<tr>
<td>Administrative Fee (#2)</td>
<td>3.20</td>
<td>3.25</td>
<td>3.35</td>
<td>3.45</td>
<td>3.65</td>
<td>3.76</td>
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<tr>
<td>Defensible Space (#6)</td>
<td>1.05</td>
<td>1.05</td>
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<tr>
<td>Total Water:</td>
<td>$27.03</td>
<td>$27.54</td>
<td>$28.10</td>
<td>$28.86</td>
<td>$29.82</td>
<td>$30.84</td>
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EXHIBIT A
Schedule of Sewer Service Charges

Monthly sewer charges are the summation of the following components:

1. Fixed Charge = $18.30 X CAF (1) X number of units.
2. Administrative / Customer Service Account Charge = $3.76 per account.
3. Capital Improvement Charge = $30.70 X CAF (1) X number of units.
4. Variable Cost (2) = $3.10 per 1,000 gallons of water use, billed as sewer use charges

(1) Capacity Adjustment Factor:

<table>
<thead>
<tr>
<th>Service Size for Billing Purposes</th>
<th>CAF</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Residential Customers</td>
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<tr>
<td>1”</td>
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<td>8”</td>
<td>53.33</td>
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<tr>
<td>10”</td>
<td>76.65</td>
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</tbody>
</table>

(2) Residential Variable Cost:

Variable sewer costs for residential customers are based on monthly water use (see #4, above) as follows: During the non-irrigation months (December through April), the variable sewer cost is calculated using the metered water use value. During irrigation billing months (May through November), the variable sewer cost shall be the lesser of the metered water use value or the non-irrigation months’ average metered water use. The non-irrigation months’ average shall not be set at a value less than 3,000 gallons.

Typical monthly single-family residential sewer service charges with no metered water use:

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</thead>
<tbody>
<tr>
<td>Base rate (#1)</td>
<td>$14.85</td>
<td>$15.20</td>
<td>$15.81</td>
<td>$16.52</td>
<td>$17.55</td>
<td>$18.30</td>
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<tr>
<td>Capital rate (#3)</td>
<td>23.80</td>
<td>27.68</td>
<td>28.79</td>
<td>29.86</td>
<td>$30.25</td>
<td>$30.70</td>
</tr>
<tr>
<td>Administrative fee (#2)</td>
<td>3.20</td>
<td>3.25</td>
<td>3.35</td>
<td>3.45</td>
<td>$3.65</td>
<td>$3.76</td>
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<tr>
<td><strong>Total Sewer:</strong></td>
<td><strong>$41.85</strong></td>
<td><strong>$46.13</strong></td>
<td><strong>$47.95</strong></td>
<td><strong>$49.83</strong></td>
<td><strong>$51.45</strong></td>
<td><strong>$52.76</strong></td>
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Ordinance 2 - Sewer
As Adopted on April 11, 2018
EXHIBIT "D"
### 2018/2019 - 5 Year Project Summary Totals - FINAL 05/23/18

<table>
<thead>
<tr>
<th>Division</th>
<th>Project Number</th>
<th>Project Title</th>
<th>2018 - 2019</th>
<th>2019 - 2020</th>
<th>2020 - 2021</th>
<th>2021 - 2022</th>
<th>2022 - 2023</th>
<th>Total</th>
<th>Project Type</th>
<th>Number of Projects</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Accounting/Information Systems</td>
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<td><strong>Water</strong></td>
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**Note:** The table above outlines project details with the following columns: Division, Project Number, Project Title, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023, Total, Project Type, and Number of Projects.
## 2018/2019 - 5 Year Project Summary Totals - FINAL 05/23/18

<table>
<thead>
<tr>
<th>Project Number</th>
<th>Project Title</th>
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<tbody>
<tr>
<td>J29805120</td>
<td>2013 Mill Site Truck #671 Cambridge</td>
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<tr>
<td>J29901170</td>
<td>Watermain Replacement - Brents Point Road</td>
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<tr>
<td>J30001170</td>
<td>Watermain Replacement - Crystal Place Road</td>
</tr>
<tr>
<td>J30101170</td>
<td>Watermain Replacement - Sills Wk #14 S-07 D-07</td>
</tr>
<tr>
<td>J30801910</td>
<td>Leak Shut B-2-1 Ipswich Street</td>
</tr>
<tr>
<td>J30901160</td>
<td>Watermain Replacement - Miller Avenue</td>
</tr>
<tr>
<td>J31001240</td>
<td>RB-3 Taking Final Certification</td>
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<tr>
<td>J31401150</td>
<td>2007 Access Road (in track &amp; field)</td>
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<tr>
<td>J31701101</td>
<td>IL Route #76 Phase I - Phase II</td>
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<tr>
<td>J32001105</td>
<td>Building Upgrade Water Resource Recovery Facility</td>
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<tr>
<td>J32101580</td>
<td>Treatment Plant Pre-Panel Replacement</td>
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<tr>
<td>J32201104</td>
<td>Sower Pumping Station Improvements</td>
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<tr>
<td>J32301200</td>
<td>Sound Chamber Out # Improvements</td>
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<tr>
<td>J32501110</td>
<td>Water Resource Recovery Facility Improvements</td>
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<tr>
<td>J32601130</td>
<td>Wetlands Mitigate Entrance</td>
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<tr>
<td>J32701220</td>
<td>Replacement &amp; Addition Sewer Toilet, Restrooms and Appurtenances</td>
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<tr>
<td>J32801170</td>
<td>W288 Boscole Bike</td>
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<tr>
<td>J32901179</td>
<td>Water Aquatic System Improvement</td>
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<tr>
<td>J33001179</td>
<td>Undies Camera Equipment</td>
</tr>
<tr>
<td>J33101200</td>
<td>Replacement Shop Tools and Equipment</td>
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<tr>
<td>J33201090</td>
<td>Final Software update - manage rolling stock as</td>
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<tr>
<td>J33301173</td>
<td>2003 Gillis Street LF</td>
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<tr>
<td>J33401230</td>
<td>2001 Equipment Trolley</td>
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<tr>
<td>J33501170</td>
<td>Roof Anti-Flash Service 66X (1-16-in) 655</td>
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<tr>
<td>J33601172</td>
<td>Replacement and Upgrade Truck 66X (1-16-in) 350</td>
</tr>
</tbody>
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### Internal Service Fert

<table>
<thead>
<tr>
<th>Project Number</th>
<th>Project Title</th>
</tr>
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<tbody>
<tr>
<td>J34101700</td>
<td>Demolition of #20 Starter Shop</td>
</tr>
<tr>
<td>J34101790</td>
<td>Venue Upgrade Enhancement</td>
</tr>
<tr>
<td>J34101799</td>
<td>Capital/GT Exterior Preservation</td>
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<tr>
<td>J34201110</td>
<td>Inseparable Improvements</td>
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<tr>
<td>J34301202</td>
<td>Championships Course Bus</td>
</tr>
<tr>
<td>J34401201</td>
<td>Maintenance Building Changes, Upkeep and Feeder Improvements</td>
</tr>
<tr>
<td>J34501203</td>
<td>Championships Course Greens and Surrounds</td>
</tr>
<tr>
<td>J34601203</td>
<td>Championships Course Greens and Surrounds</td>
</tr>
<tr>
<td>J34701203</td>
<td>Maintenance of Parking Lot - Drainage Group &amp; Drainage</td>
</tr>
<tr>
<td>J34801207</td>
<td>Permanent Maintenance of Curt-field - Chair/Ground</td>
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<tr>
<td>J35101090</td>
<td>1999 In-Course Sprayers #175</td>
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<tr>
<td>J35201133</td>
<td>2000 Carnell Club Car #598</td>
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<td>J35801126</td>
<td>2007 Club Car In-Course Ball Roller #500</td>
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<td>2016 Div Cart #704</td>
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<td>J36001126</td>
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### Community Services Championn Ship 06F

<table>
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<tbody>
<tr>
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<td>2019 30 500 Fairway Power #500</td>
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### Project Type

- A: Major Projects - New Initiatives
- B: Major Projects - Existing Facilities
- C: Capital Improvement - New Initiatives
- D: Capital Improvement - Existing Facilities
- E: Capital Maintenance
- F: Rolling Stock
- G: Equipment & Software
Capital Revenues and Expenses

The capital revenue is the summation of monthly capital fees collected in the utility rates, connection fees, and interest income and increases by approximately 1.1% per year averaged over 5 years.

The capital expense is the capital improvement projects net of grants. This is the current five-year capital plan that is being developed as part of the budget process. The five-year capital expenses and revenues are presented in the following table.

<table>
<thead>
<tr>
<th>5-Year Plan</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
<th>2021-22</th>
<th>2022-23</th>
<th>5-Yr Sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Revenue</td>
<td>-4,913,000</td>
<td>-4,960,000</td>
<td>5,014,000</td>
<td>5,073,000</td>
<td>5,133,000</td>
<td>25,093,000</td>
</tr>
<tr>
<td>Capital Expense</td>
<td>(4,786,000)</td>
<td>(4,881,000)</td>
<td>(4,736,000)</td>
<td>(4,424,000)</td>
<td>(4,715,000)</td>
<td>(23,542,000)</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$1,551,000</td>
</tr>
</tbody>
</table>

It is important to remember that the capital expenses are budget estimates with further refinement to occur in the CIP budgeting process. The goal of the rate study is to collect sufficient revenues to fund capital expenses over the following five years.

For the 2012-13 through the 2016-17 budget year, the District accumulated $2,000,000 per year in savings for the construction of the Effluent Export Project. In 2017-18 the District accumulated $1 million while work was performed on necessary sewer pumping station work. In 2018-19 the District will begin accumulating $2 million annually for the project. The Effluent Export Project is an on-going project with planning, design and construction costs that have occurred every year since the Phase II project began in 2010-11.

Summary

The proposed utility rate increase is to raise water rates by 3.4% and sewer rates by 2.7% for a total utility rate increase of 3.0%. The rates are currently scheduled
## Export Pipeline Phase II

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Annual CIP Expenses</th>
<th>Cumulative CIP Expenses</th>
<th>Annual CIP Revenue</th>
<th>Project Balance</th>
<th>Sewer Rate Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11 Fiscal Year</td>
<td>$21,250</td>
<td>$21,250</td>
<td>$400,000</td>
<td>$378,750</td>
<td>3.9%</td>
</tr>
<tr>
<td>2011-12 Fiscal Year</td>
<td>$330,827</td>
<td>$352,077</td>
<td>$750,000</td>
<td>$797,923</td>
<td>9.4%</td>
</tr>
<tr>
<td>2012-13 Fiscal Year</td>
<td>$111,663</td>
<td>$463,740</td>
<td>$2,000,000</td>
<td>$2,686,260</td>
<td>9.9%</td>
</tr>
<tr>
<td>2013-14 Fiscal Year</td>
<td>$59,424</td>
<td>$523,164</td>
<td>$2,624,338</td>
<td>$5,251,174</td>
<td>11.1%</td>
</tr>
<tr>
<td>2014-15 Fiscal Year</td>
<td>$744,805</td>
<td>$1,267,969</td>
<td>$2,000,000</td>
<td>$6,506,369</td>
<td>9.1%</td>
</tr>
<tr>
<td>2015-16 Fiscal Year</td>
<td>$606,318</td>
<td>$1,874,287</td>
<td>$2,000,000</td>
<td>$7,900,051</td>
<td>4.0%</td>
</tr>
<tr>
<td>2016-17 Fiscal Year</td>
<td>$494,331</td>
<td>$2,368,618</td>
<td>$2,000,000</td>
<td>$9,405,720</td>
<td>3.8%</td>
</tr>
<tr>
<td>2017-18 Fiscal Year</td>
<td>$1,743,164</td>
<td>$4,111,782</td>
<td>$1,000,000</td>
<td>$8,662,556</td>
<td>3.3%</td>
</tr>
<tr>
<td>2018-19 Fiscal Year</td>
<td>$700,000</td>
<td>$4,811,782</td>
<td>$2,000,000</td>
<td>$10,056,602</td>
<td>4.0%</td>
</tr>
<tr>
<td></td>
<td>$4,811,782</td>
<td></td>
<td></td>
<td>$14,774,338</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT "F"
# Computation

**Project**: IVGD Export Pipeline Project, Phase II  
**Subject**: Estimate of Probable Construction Cost - 16 inch Effluent Pipeline  
**Task**: PreDesign Cost Estimate - Single Bid  
**Start**: 2021 construction start with assumed 4% escalation  
**Computed**:  
**Date**: 5/30/2012  
**Reviewed**: HDR  
**Date**: 8/4/2012

## DIVISION 1 - GENERAL REQUIREMENTS

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LS</td>
<td>$1,311,829</td>
<td>$1,311,829</td>
</tr>
<tr>
<td>1</td>
<td>LS</td>
<td>$353,549</td>
<td>$353,549</td>
</tr>
</tbody>
</table>

**SUBTOTAL**: $1,765,377

## DIVISION 2 - SITE WORK

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LS</td>
<td>$250,000</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL**: $250,000

## DIVISION 3 - CONCRETE

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,600</td>
<td>CY</td>
<td>$263.19</td>
<td>$429,497</td>
</tr>
</tbody>
</table>

**SUBTOTAL**: $429,497

## DIVISION 15 - MECHANICAL

### PIPES

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td>LF</td>
<td>$195.77</td>
<td>$14,683.25</td>
</tr>
<tr>
<td>176</td>
<td>LF</td>
<td>$6.58</td>
<td>$1,158.80</td>
</tr>
<tr>
<td>29,700</td>
<td>LF</td>
<td>$210.55</td>
<td>$6,323,508</td>
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</tbody>
</table>

**Fittings**:

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LS</td>
<td>$188,800</td>
<td>$188,800</td>
</tr>
</tbody>
</table>

**VALUES**

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>EACH</td>
<td>$2,631.86</td>
<td>$28,950.46</td>
</tr>
<tr>
<td>11</td>
<td>EACH</td>
<td>$197.39</td>
<td>$2,171.29</td>
</tr>
<tr>
<td>5</td>
<td>EACH</td>
<td>$1,215.93</td>
<td>$6,079.65</td>
</tr>
<tr>
<td>2</td>
<td>EACH</td>
<td>$5,263.73</td>
<td>$10,527.46</td>
</tr>
<tr>
<td>10</td>
<td>EACH</td>
<td>$657.97</td>
<td>$6,579.70</td>
</tr>
</tbody>
</table>

**Valve Boxes and Casing (Blowoff)**

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>EACH</td>
<td>$6,379.66</td>
<td>$12,759.28</td>
</tr>
</tbody>
</table>

**Pipeline Pressure Testing**

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>UNITS</th>
<th>UNIT PRICE</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>29,700</td>
<td>LF</td>
<td>$2.63</td>
<td>$77,868.70</td>
</tr>
</tbody>
</table>

**SUBTOTAL**: $14,823,654

## Subtotal 1 (Division Total)

**Contractor Overhead and Profit (8% of Subtotal 1)**

**$1,185,893**

## Subtotal 2

**Construction Contingencies (20% of Subtotal 2)**

**$2,371,787**

**Design (8% of Subtotal 2)**

**$1,280,786**

**Administrative Costs (8% of Subtotal 2)**

**$1,280,786**

**Subtotal 3**

**$23,083,763**

## TOTAL ESTIMATED PROJECT COST

**$23,083,763**
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM G(4)
– JUDICIAL REVIEW OF THE OFFICE OF ATTORNEY GENERAL’S (“OAG’S”) FINDINGS AND CONCLUSIONS IN FILE NO. 13897-257 FINDING AN OPEN MEETING LAW (“OML”) VIOLATION

Introduction: On January 17, 2019 the OAG issued its Findings of Fact and Conclusions of Law (“findings and conclusions”) in File No. 13897-257 determining that the IVGID Board had committed an OML violation, pursuant to the authority of NRS 241.0395(1). Notwithstanding staff and attorney Guinasso admit that “the OAG’s Findings of Fact and Conclusions of Law are academic and do not penalize IVGID in any way,” they are seeking approval to “initiat[e]...a lawsuit” challenging the findings and conclusions at a cost “not (to) exceed $5,000.” Because this would be an incredible waste of taxpayer funds, and may not even be a permissible type of legal proceeding, I object. And that’s the purpose of this written statement.

What is it Staff and Attorney Guinasso Intend to Accomplish by Filing the Proposed Lawsuit? Given the findings and conclusions are “academic and do not penalize IVGID in any way,” what exactly do GM Pinkerton and attorney Guinasso intend to accomplish by challenging those findings and conclusions? What is the public interest? Whatever the answer, how can it possibly be worth the expenditure of $5,000 of taxpayer monies?

Since Chairperson Wong has announced she likes to “keep score” of OML complaints and their resolution, is the purpose of a lawsuit to enhance IVGID’s winning percentage? What about protecting attorney Guinasso from claims of malpractice given his actions are at the heart of this OML violation? What about protecting attorney Guinasso from an abuse of process lawsuit by local citizen Kevin Lyons’ Governance Sciences Group, Inc. (“GSGI”) since it was compelled to respond to a lawsuit staff had no authority to initiate? Is IVGID so flush with cash it can throw away taxpayer funds on endeavors such as these as opposed to reducing the Beach (“BFF”) and/or Recreation (“RFF”) Facility Fee by a like amount?

IVGID Does Not Have Legal Grounds Upon Which to Initiate a Lawsuit Seeking to Set Aside the OAG’s Findings and Conclusions: Take a close look at NRS 241. Although NRS 241.039(2) compels the OAG to “investigate and prosecute any (OML) violation of this chapter,” and NRS 241.0395(1) allows the OAG to “make...findings of fact and conclusions of law that a public body has taken action in violation of any provision of...chapter” NRS 241 and compel a “public body (to)...include an item on (its) next agenda...which acknowledges th(os)e findings of fact and conclusions of law,” nowhere is the

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2 See page 210 of the 2/6/2019 Board packet.
3 See page 215 of the 2/6/2019 Board packet.
public body given standing to judicially challenge the OAG’s actions. So upon what bases may IVGID initiate a new lawsuit against the OAG? And why hasn’t attorney Guinasso shared this authority with the Board?

The OAG’s Findings and Conclusions Do Not Deny Any Person Any Right: Although the OAG could have “sue(d) in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of th(at) chapter” [see NRS 241.037(1)], and/or “brought...a civil action...(to) recover...a civil penalty in an amount not to exceed $500...(against) each member of (the Board)...who attend(ed) a meeting...where action (wa)s taken in violation of any provision of th(a) chapter...who participate(d) in such action with knowledge of the violation” [see NRS 241.040(4)], here no such suit nor civil action was brought.

Consequently, IVGID Lacks Standing to File Suit: Although NRS 241.037(2) states that “any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides,” such suit is pre-conditioned upon some denial of right. Given here there was no such denial, IVGID lacks standing to bring suit under NRS 241.037(2).

Moreover, the type of suit such a person may bring is limited under NRS 241.037(2) to:

1. “Seek(ing) to have an action taken by the public body declared void...requiri(ing) compliance with or prevent violations of this chapter;” or,

2. “Determin(ing) the applicability of...chapter (NRS 241) to discussions or decisions of the public body.”

Since here the OAG’s findings and conclusions declared no action taken by the IVGID Board to be void, nor did they compel some “compliance...with...chapter” NRS 241, nor did they seek “to...prevent (future) violations of...chapter” NRS 241, nor did they “determine the applicability of...chapter (NRS 241) to discussions or decisions of” IVGID, IVGID lacks standing to bring the type of suit which can be brought under NRS 241.037(2).

These stark facts may be prejudicial to IVGID staffs’ position but when a statute like this is clear and unambiguous, Stubbs v. Strickland, 129 Nev. 146, 297 P.3d 641 (2013) instructs that its plain language means what it says.

The Type of Suit Attorney Guinasso Wants to Bring, is One That Sets Asides the OAG’s Findings and Conclusions: Here pages 5-7 of attorney Guinasso’s memorandum\(^4\) details all the reasons why the OAG’s findings and conclusions were wrong: i.e., that: they were “untimely;” they were “not supported by substantial evidence;” “the OAG (made)...findings and conclusions on an issue that was not presented to the OAG;” “the holding in (Comm’n on Ethics v.) Hansen[1, 133 Nev.

Adv. Op. 39, 396 P.3d 807, 809-10 (2017)] does not apply;” “the...OML does not apply;” and, since the controversy was the subject of IVGID’s lawsuit against GSGI, that court’s decisions collaterally estop the OAG from making the findings and conclusions it did. In other words, IVGID seeks to set aside the OAG’s findings and conclusions.

But Had the Legislature Intended That Public Bodies Can Seek to Set Aside the OAG’s OML Findings and Conclusions, it Certainly Knew How to Enact a NRS That Grants Such Jurisdiction: Consider NRS 281A.710(1). There similar to the OML, the Nevada Ethics Commission (“NEC”) has the jurisdiction to “render an opinion that interprets the statutory ethical standards and applies those standards to a given set of facts and circumstances regarding the propriety of the conduct of a public officer or employee.” And similar to the OML, where the NEC renders such an opinion, NRS 281A.765(1) requires the issuance of findings of fact and conclusions of law. But unlike the OML, where the NEC “renders an opinion in proceedings concerning an ethics complaint,” NRS 281A.785(3) holds that such “action...is a final decision for the purposes of judicial review pursuant to NRS 233B.1305.”

Because the Legislature Has Provided For the Setting Aside of NEC Ethics Opinions, Yet it Hasn’t Insofar as OAG OML Opinions, the Legislature Expressly Intended That the Possible Setting Aside of OAG OML Opinions Not be Capable of Judicial Review: Stated in legal terms, this doctrine is called expressio unius est exclusio alterius and it declares:

"To express one thing is to exclude another. This maxim reflects a form of reasoning that is widespread and important in interpretation...the a contrario argument... (i.e. the) negative implication (or)...implied exclusion. An implied exclusion argument lies whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. Because of this expectation, the Legislature's failure to mention 'the thing' becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied."\(^5\)

Thus "whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation it would have referred to that thing expressly...(its) failure to mention the thing becomes grounds for inferring that it was deliberately excluded."\(^6\)

Conclusion: one of my written statements attempts to identify one or more problems with the powers IVGID exercises, and every one includes a detailed discussion about the problem(s), how we got there, and what I view is required to remedy them. And here I have provided yet another

\(^5\) NRS 233B.130(1) declares that “any party who is...a party of record...in an administrative proceeding...by an agency...and (is) aggrieved by a final decision in a contested case is entitled to judicial review of the decision.”

example. Here the Board and the public are seeing the “IVGID culture” in its full, arrogant mode. Blaming everyone else for its staffs’/attorney’s inappropriate actions rather than accepting blame, and using public funds to perpetuate a wasteful endeavor that accomplishes no public benefit.

Board members can stick their collective heads in the sand and deny there are problems (because you can “bring a horse to water, but you can’t make him drink”). Or they can defer to the biased responses from a less than forthright staff and attorney who are part of the problem. Or they can look for ways to attack and marginalize critics like me who are nothing more than messengers, making us the focus of attention rather than the issues we have identified. Or they can just do the right thing; start taking control over the District’s business and taking away the powers they have abdicated away to staff!

And by the way, to those asking where your RFF/BFF are spent, now you have another example and it’s certainly not facilities for recreation.

Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM C –
PUBLIC COMMENTS – MORE EVIDENCE THE ADVICE GIVEN TO THE
BOARD BY ITS STAFF AND ATTORNEY ARE FLAWED – HERE
LOBBYING TO INFLUENCE LEGISLATION

Introduction: When one takes a step backwards and looks at the unilateral authority the Board
has given to unelected staff and its attorney, it makes one ask the question “why the need for a
Board?” The public didn’t vote for Board Trustees so they could abdicate their responsibilities to un-
elected staff. Yet under Chairperson Wong’s tenure, that’s exactly what has happened. And at the
Board’s January 23, 2019 meeting, front and center, was evidence of the Board’s inappropriate
conduct. And that’s the purpose of this written statement.

Policy No. 3.1.0\(^1\): was amended effective April 25, 2018. Over the public’s objections, Policy
3.1.0.17 was amended to give the GM the authority to adopt positions on proposed State legislation
on the Board’s behalf in the event the Board didn’t call a special meeting or agendize an item at a
regularly scheduled meeting for purposes of taking a position on legislation for which such position
must be deemed established\(^2\).

Notwithstanding, IVGID Has No Power to Lobby For/Against State Legislation: We’ve had this
discussion before\(^3\). According to the Legislative Counsel Bureau, “the purpose of...general
improvement districts (“GIDs”) is to provide municipal-type services to an area which needs them, but
which may not need (n)or want the full range of services implied by incorporation. (Thus) GIDs are
most effectively used where it will be necessary to carry out ongoing operation and maintenance of a
(particular) facility or service.” Given GIDs are creatures of County Boards of Commissioners ["County
Boards" (see NRS 318.015(1) and 318.075(1))], the only "basic powers" they may exercise\(^4\) are those
expressly included in their initiating [NRS 318.055(4)(b)] or supplemental (NRS 318.077) ordinance(s)

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\(^1\) This is a policy which according to its title, purportedly addresses “Conduct Meetings of the Board of
Trustees” meetings rather than influencing State legislation.

\(^2\) Policy No. 3.1.0 can be viewed at pages 8-13 at https://www.yourtahoeplace.com/uploads/pdf-
ivgid/IVGID-Board-Policies.pdf. I have attached page 13, and section 0.17 in particular, as Exhibit “A”
to this written statement.

\(^3\) Go to pages 154- of the packet of materials prepared by staff in anticipation of the Board’s May 10,
2017 meeting [“the 5/10/2017 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-
ivgid/BOT_Packet.Regular_5-10-17.pdf)].

\(^4\) Since “all of such statutes...constitute a grant of power to certain boards and governing bodies, and
(they) are a deprivation of powers and privileges in respect to the individuals residing within the
affected areas...(they)...must...be strictly construed, to include no more than (the) Legislature clearly
intended” [see A.G.O. No. 63-61, p. 103 (August 12, 1963)].
with the *proviso* they must be "one or more of those authorized in NRS 318.116, as supplemented by
the sections of this chapter designated therein."

**NRS 318.116 Does Not Recognize the Power to Create Laws Nor to Influence State Legislation as a Legitimate GID Basic Power:** Don't believe me? Take a look for yourself! Even if such a power were recognized, since there is no question IVGID has never been granted this power by the County Board, for IVGID it *does not exist.*

**Dillon's Rule:** Moreover, since "Nevada is considered a state without home rule...(local)
governments generally have *only* those powers that are (expressly) granted to them by the Legislature...(because) without home rule, the general application of 'Dillon's Rule' *limits* the powers of counties, cities...towns" and here, IVGID. In other words,

"[A] municipal corporation\(^5\) possesses and can exercise the following powers *and no others:* First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—*not simply convenient, but indispensable.*"\(^7\)

**IVGID's Creation:** IVGID was created on May 20, 1961 as a "body corporate and politic and a quasi-municipal corporation" [NRS 318.075(1)] pursuant to Washoe County Board Bill No. 57, Ordinance 97. Its initial basic powers were expressly *limited* to: 1) grading, re-grading, surfacing and resurfacing Incline Village streets, alleys and public highways; 2) constructing, reconstructing and improving Incline Village streets with curbs, gutters, drains, catch basins and sidewalks; 3) constructing, reconstructing, replacing or extending storm, sewer and other drainage; 4) constructing, reconstructing, improving, extending or bettering Incline Village's sanitary sewer system; and, 5) acquiring, constructing, reconstructing, improving, extending or bettering facilities for the supply, storage and distribution of water.

In other words, **IVGID was created to be nothing more than a public utility district.** And it was not created to lobby to influence legislation.

**IVGID's Assumption of Additional Powers Based Upon Their Alleged Incidence, Necessity and/or Implication:** IVGID staff will likely argue IVGID has the power to furnish facilities and services for *all* questionable purposes whether or not necessary to furnish public recreation or utility facilities because of NRS 318.210 which gives the Board the power to "exercise all rights and powers necessary

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\(^5\) Go to [https://www.leg.state.nv.us/nrs/NRS-318.html#NRS318Sec116.](https://www.leg.state.nv.us/nrs/NRS-318.html#NRS318Sec116).

\(^6\) GIDs are quasi-*municipal* corporations [NRS 318.015(1) and 318.075(1)].

\(^7\) See page 5 of that April 2014 Legislative Counsel Bureau Research Division Policy and Program Report on State and Local Government ([http://www.leg.state.nv.us/Division/Research/Publications/PandP/19-SLG.pdf](http://www.leg.state.nv.us/Division/Research/Publications/PandP/19-SLG.pdf)).
or incidental to or implied from the specific powers granted in...chapter" NRS 318. I disagree for at least two reasons. First, because of Dillon's Rule (discussed above). And second, because of the doctrine of expressio unius est exclusio alterius which in lay person's terms declares that:

"To express one thing is to exclude another. This maxim reflects a form of reasoning that is widespread and important in interpretation...the a contrario argument... (i.e. the) negative implication (or)...implied exclusion. An implied exclusion argument lies whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. Because of this expectation, the Legislature's failure to mention 'the thing' becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied."8

Thus "whenever there is reason to believe that if the Legislature had meant to include a particular thing within the ambit of its legislation it would have referred to that thing expressly...(its) failure to mention the thing becomes grounds for inferring that it was deliberately excluded."8

Notwithstanding, the Board Approved Entrance Into a Contract With Tri-Strategies9 For State Legislative Advocacy Services10 at its December 12, 2018 Meeting: "What we are paying for is getting to know the (State) legislative team, tracking bills, acting on our behalf when some wild cards make statements, and dodging some bullets."11 In other words, stifling the views of local citizens critical of IVGID labeled as "wild cards," and perpetuating IVGID's propaganda spin. And as justification, GM Pinkerton asserts that "we are the largest entity that doesn't have regular (legislative advocacy) coverage12 but...did, in the past, up until 2013."13

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12 And the only one of the 89 or more GIDs in the State!
How Much Are We Paying for Legislative Advocacy Services and Where Has it Been Budgeted? The answer to the first question is simple; a whopping $30,000 in fees plus travel and other “job related” expenses.\textsuperscript{14}

The answer to the second question is more interesting. According to GM Pinkerton, $24,000 was appropriated in the 2018 budget, and the remaining $6,000 comes from “the General Fund, Professional Consultants.” I direct the reader to the 2018-19 budget.\textsuperscript{15} I defy any Board member or anyone else for that matter to show me where in that budget $24,000 was appropriated for Legislative Advocacy. I have made an express public records request for these records,\textsuperscript{16} and I predict that none will be made available for my examination because I do not believe they exist.

Which raises another material question: when the 2018-19 budget was approved, did any Board member know that $24,000 had been appropriated for Legislative Advocacy? Assuming the answer to be “no,” what other “vital” hidden appropriations were not shared with the Board and the public? Or more bothersome, have staff “puffed” the budget with all sorts of unnecessary and undisclosed expenditures so that when something like consulting or legislative advocacy comes along, there’s a pocket from which the funds can be spent?

To make my point, let’s continue the discussion. Did the Board know that “professional consultants” is an appropriated expenditure under the General Fund? I didn’t. So I went back into the budget and retrieved Schedule B-10 at Page 19 of Form 4404LGF filed with the State Department of Taxation.\textsuperscript{17} Nowhere do I see an appropriated expense entry for “professional consultants.” Do you? Now maybe it’s buried somewhere in these numbers and no one other than Gerry Eick knows where. But maybe it isn’t. \textit{Maybe GM Pinkerton has fabricated this fact the same way he has fabricated the notion that engineering staffing costs are allocated to and added on top of all capital improvement project (“CIP”) expenditures.} Given our staff’s track record for truthfulness and transparency, which do you think?

\textit{It now appears we can’t trust anything in the budget staff proposes because they fail to disclosed to the Board and the packet exactly what’s included, and what’s actually necessary.}

\textbf{The Board’s January 23, 2019 Meeting:} Agenda item E at that meeting consisted of a verbal legislative update from the lobbyist the Board improperly contracted with,\textsuperscript{18} Tri-Strategies. Since

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\textsuperscript{14} See page 172 of the 12/12/2018 Board packet.


\textsuperscript{16} A copy of this records request is attached as Exhibit “B” to this written statement.

\textsuperscript{17} This page comes from page 25 of the 2018-19 budget, and a copy is attached as Exhibit “C” to this written statement.

\textsuperscript{18} Improperly, because lobbying to influence State legislation is not a basic power IVGID may exercise.

\textsuperscript{19} The agenda for that meeting can be viewed at pages 1-3 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_1-23-19.pdf.
IVGID livestreams its Board meetings, Tri-Strategies’ presentation can easily be viewed at 12:38-25:12 at https://livestream.com/IVGID/events/8537200/videos/186265786 (“the 1/23/2019 livestream”). There Victor Salcido, a partner in Tri Strategies, gave the following testimony and responded to the following question(s)/comment(s) at 21:00-24:00 of the livestream:

Mr. Salcido: “We represent you as a Board as a whole, and so...we will be taking direction from you (as a Board) on particular bills. As they are introduced we will...present them to you, get direction from you, and go from there. Happy to take any questions at this point.

Trustee Morris: Quick question...I can imagine, but I don’t know...potentially a bill could come ...and require some quick...action...by us and it could fall outside of our meeting schedule. What happens then?

Mr. Salcido: (Although) we report through the general manager...But again, I want to be very clear about this point...we don’t take action in one direction or another on a particular bill absent direction from you...speaking as one Board...In the scenario you painted which is we’ve got to make a quick decision...when it comes to...big items like advocating for or against a particular bill, we would take direction from you (the Board) exclusively...If (a bill) possible affects GIDs, then we would go through you (the Board) for direction...

Trustee Horan: I think Victor has made it very clear he’s not going to be doing anything unless he has direction from the Board.

Mr. Salcido: That is correct.”

In other words, I VGID’s GM has no authority to adopt a position on a proposed bill before the State Legislature on the IVGID Board’s behalf!

So Why Was Policy No. 3.1.0 Amended to Ratify the Contrary Authority? How can the Board and the public accept the advice of a staff and attorney who assert it is appropriate for the Board to abdicate legislative advocacy to un-elected staff, when Mr. Salcido has made it so clear that this is inappropriate? And if staff’s and our attorney’s advice on this subject is wrong, doesn’t that fact suggest it may very well be wrong on a whole slew of matters?

And Does the Board Now Intend to Rescind its Amendment to Policy No. 3.1.0.17 So it Comports With What Our Legislative Advocate Has Instructed? I formally ask for that this item be agendized for the next Board meeting.

Conclusion: Every one of my written statements attempts to identify one or more problems with the powers IVGID exercises, and every one includes a detailed discussion about the problem(s), how we got there, and what I view is required to remedy them. And here I have provided yet another example. Dillon’s Rule states that if there be any doubt as to whether a local government may legitimately exercise a power, that doubt is to be resolved against the exercise of that power. Although I do not believe there to be any doubt, assuming arguendo there is, whether it is appropriate for un-elected staff to lobby the Legislature for/against proposed legislation on the
Board's behalf must be resolved against IVGID. I urge the Board to stop staff from wasting local property owners' Recreation ("the RFF") and Beach ("the BFF") Facility Fees on "pie-in-the-sky" endeavors such as these it has no power to pursue.

Board members can stick their collective heads in the sand and deny there are problems (because you can "bring a horse to water, but you can't make him drink"). Or they can defer to the biased responses from a less than forthright staff and attorney who are part of the problem. Or they can look for ways to attack and marginalize critics like me who are nothing more than messengers, making us the focus of attention rather than the issues we have identified. Or they can just do the right thing; recognize IVGID for the limited purpose local government it is, and start acting like one!

Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!
Conduct Meetings of the Board of Trustees
Policy 3.1.0

A unanimous affirmative vote shall be recorded as a favorable motion and approval of each individual item included on the Consent Calendar.

0.16 Advisory Committees. SECTION OMITTED

0.17 Legislative Matters. The General Manager may from time to time propose positions on legislative issues, which positions shall be reviewed and approved by the Board at its regular meeting. In the event a position on a legislative issue must be established prior to the next regular Board meeting, the General Manager is hereby authorized to adopt a position on IVGID’s behalf.

0.18 Conflict Resolution. In the event that the provisions of Policy 3.1.0 conflict with any other Policy Provisions, this section shall prevail.

Effective April 25, 2018
Hello Ms. Herron -

In the December 12, 2018 Board packet Mr. Pinkerton represents that $24K in the 2018-19 budget has been appropriated for "Legislative Advocacy," and another $3K is available in the General Fund which has been budgeted under "Professional Consultants" which has also been appropriated.

I would like to examine records which evidence precisely where both of these appropriations have been budgeted. Please don't you refer me to staff's version of the budget which sits on the public's web site unless you point me to exactly where both of these expenditures have been appropriated (I want a page number and a description of where the entry allegedly exists). I have gone though the same and as you know, neither is appropriated anywhere.

So instead, I want to examine other records which evidence exactly where these two expenditures have been budgeted.

Additionally, I want to examine records which:

1. Evidence the chart of account number(s) assigned for both of these appropriations; and,
2. Staff's purchase order forth both legislative advocacy and professional consultants under the General Fund.

Thank you for your cooperation. Aaron Katz
EXHIBIT "C"
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<th>EXPENDITURES BY FUNCTION AND ACTIVITY</th>
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<th>ESTIMATED CURRENT YEAR ENDING 6/30/2018</th>
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Indigena Village General Improvement District

SCHEDULE B - GENERAL FUND

FUNCTION General Government

FORM 4404LG

Last Revised 12/6/2017

Page 19
Schedule B-10

283
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM J(1)(a) – OPEN MEETING LAW (“OML”) FILE NO. 13897-305 – THE OFFICE OF THE ATTORNEY GENERAL (“OAG”) DID NOT FIND THAT CHAIRPERSON WONG’S JULY 6, 2018 LETTER TO THE U.S. DEPARTMENT OF TRANSPORTATION (“USDOT”) IMPERMISSIBLY COMMITTED IVGID TO SPENDING $7.5 MILLION IN MATCHING BUILD GRANT FUNDS TO CONSTRUCT TAHOE TRANSPORTATION DISTRICT’S (“TTD’S”) BIKE PATH PROJECT

Introduction: On or about August 10, 2018 I filed an Open Meeting Law (“OML”) complaint with the OAG against the IVGID Board¹. My complaint was directed against Chairperson Wong’s unilateral action, purportedly on the Board’s behalf, committing $7.5 million “as a match for (TTD’s) BUILD grant (application) to allow co-location and construction of” its proposed bike path project². The basis of my complaint was that IVGID “staff, in tandem with TTD, drafted such...letter and presented it to...chairperson, Kendra Wong, for her signature, on behalf of the IVGID Board...rather than presenting the...letter to the Board for its approval (given it)...commits $7.5 million of rate payer funds as a ‘match’ for construction of TTD’s pathway project.”³ And for this behavior, IVGID staff disingenuously proclaim “No Open Meeting Law Violation.”⁴ And that’s the purpose of this written statement.

Attorney Guinasso’s Excuse: was that Chairperson’s “letter did not commit public funds (n)or make any other commitment that had not been previously approved by the Board of Trustees.”⁵

The OAG’s Conclusion: “Although (Chairperson Wong’s)...Letter of Support indicates that the Board has funds available as a match for the (TTD’s) co-location project, it did not legally obligate or commit the (IVGID) Board to payment of any money and (thus) was not an ‘Action’ of the Board.”⁶

Why I Disagree With the OAG’s Conclusion: The OAG concluded that “Chairwoman Wong’s execution of the Letter of Support (wa)s consistent with the ‘intent’ of the Board’s prior actions related to (an) Interlocal Agreement and subsequent amendment⁷ to th(at) agreement with TTD.”⁸

² See pages 533-534 of the 2/6/2019 Board packet.
³ See page 525 of the 2/6/2019 Board packet.
⁴ See page 4, the agenda portion of the 2/6/2019 Board packet.
⁵ See page 496 of the 2/9/2019 Board packet.
⁷ Attorney Guinasso revels in the fact he can manipulate words and facts to make them state something other than the truth. And page 2 of his response to my OML complaint (see page 496 of 1
Putting aside the fact “intent” in executing an agreement is the equivalent of actually agreeing, I direct the reader to the amendment itself\(^9\). A close inspection reveals:

1. There is no agreement whatsoever that IVGID will in fact be permitted by TTD to relocate its effluent pipeline under TTD’s proposed bike path;

2. Article II, ¶1\(^{10}\) makes clear that any agreement which permits IVGID to relocate its effluent pipeline under TTD’s proposed bike path must be the subject of “a future agreement” (in other words, nothing more than an agreement-to-agree which is no agreement at all);

3. Thus if IVGID is permitted to relocate its effluent pipeline under TTD’s proposed bike path, there is no agreement what portion of TTD’s BUILD grant, if approved, will be applied to IVGID’s costs of relocating the proposed bike path;

4. If IVGID is permitted to relocate its effluent pipeline under TTD’s proposed bike path, there is no agreement what costs IVGID will be assessed, future maintenance responsibilities, etc.;

5. Article I, ¶2\(^{11}\) provides for nothing more than sharing in a portion of the cost (up to $300,000) of an Environmental Impact Statement (“EIS”) associated with TTD’s proposed bike path;

6. Moreover, whatever the amendment actually provides, Article II, ¶2\(^{10}\) makes clear that either side “reserve(s) the right to...terminate (it)...for any reason (whatsoever) upon (a mere) thirty...day(s) written notice;”

7. And whatever the amendment actually provides, Article II, ¶2\(^{10}\) makes clear that either side may unilaterally decide to “discontinue participation in any future phases of the (TTD’s) co-alignment project;”

8. And whatever the amendment actually provides, Article II, ¶7\(^{12}\) makes clear that “nothing contained (there)in...shall be deemed (n)or construed to create...any liability for one agency...with respect to the indebtedness, liabilities, and obligations of the other;” and,

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the 2/9/2019 Board packet) is a good example. There he wrongly represents that “Chair Kendra Wong signed (her) letter of support...consistent with (and)...in furtherance of the (Board’s)...October 30, 2014...amendment to...the Interlocal Agreement.” For the OAG to have fixated upon this alleged assertion of fact to the exclusion of the language in the amendment itself, was error.

\(^8\) See page 492 of the 2/9/2019 Board packet.


\(^{10}\) See page 335 of the 11/13/2018 Board packet.

\(^{11}\) See page 334 of the 11/13/2018 Board packet.
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS FEBRUARY 6, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM J(1)(a) – OPEN MEETING LAW (“OML”) FILE NO. 13897-305 – THE OFFICE OF THE ATTORNEY GENERAL (“OAG”) DID NOT FIND THAT CHAIRPERSON WONG’S JULY 6, 2018 LETTER TO THE U.S. DEPARTMENT OF TRANSPORTATION (“USDOT”) IMPERMISSIBLY COMMITTED IVGID TO SPENDING $7.5 MILLION IN MATCHING BUILD GRANT FUNDS TO CONSTRUCT TAHOE TRANSPORTATION DISTRICT’S (“TTD’S”) BIKE PATH PROJECT

Introduction: On or about August 10, 2018 I filed an Open Meeting Law (“OML”) complaint with the OAG against the IVGID Board\(^1\). My complaint was directed against Chairperson Wong’s unilateral action, purportedly on the Board’s behalf, committing $7.5 million “as a match for (TTD’s) ...BUILD grant (application) to allow co-location and construction of” its proposed bike path project\(^2\). The basis of my complaint was that IVGID “staff, in tandem with TTD, drafted such...letter and presented it to...chairperson, Kendra Wong, for her signature, on behalf of the IVGID Board...rather than presenting the...letter to the Board for its approval (given it)...commits $7.5 million of rate payer funds as a ‘match’ for construction of TTD’s pathway project.”\(^3\) And for this behavior, IVGID staff disingenuously proclaim “**No Open Meeting Law Violation.**”\(^4\) And that’s the purpose of this written statement.

**Attorney Guinasso’s Excuse:** was that Chairperson’s “letter did not commit public funds (n)or make any other commitment that had not been previously approved by the Board of Trustees.”\(^5\)

**The OAG’s Conclusion:** “Although (Chairperson Wong’s)...Letter of Support indicates that the Board has funds available as a match for the (TTD’s) co-location project, it did not legally obligate or commit the (IVGID) Board to payment of any money and (thus) was not an ‘Action’ of the Board.”\(^6\)

**Why I Disagree With the OAG’s Conclusion Chairperson Wong’s July 6, 2018 Letter to the USDOT Was Consistent With the Intent of the Board’s Prior Actions Related to the Interlocal Agreement and its Subsequent Amendment:** The OAG concluded that “Chairwoman Wong’s execution of the Letter of Support (wa)s consistent with the ‘intent’ of the Board’s prior actions

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\(^1\) See pages 521-539 of the packet of materials prepared by staff in anticipation of this Board’s February 6, 2019 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_2-6-19.pdf (“the 2/6/2019 Board packet”)].

\(^2\) See pages 533-534 of the 2/6/2019 Board packet.

\(^3\) See page 525 of the 2/6/2019 Board packet.

\(^4\) See page 4, the agenda portion of the 2/6/2019 Board packet.

\(^5\) See page 496 of the 2/9/2019 Board packet.

related to (an) Interlocal Agreement and subsequent amendment\(^7\) to th(at) agreement with TTD.\(^8\) I disagree. Putting aside the fact “intent” in executing an agreement is the equivalent of actually agreeing, I direct the reader to the amendment itself\(^9\). A close inspection reveals:

1. There is no agreement whatsoever that IVGID will in fact be permitted by TTD to relocate its effluent pipeline under TTD’s proposed bike path;

2. Article I, ¶2\(^10\) of the amendment provides for nothing more than sharing in a portion of the cost (up to $300,000) of an Environmental Impact Statement (“EIS”) associated with TTD’s proposed bike path;

3. Article II, ¶1\(^11\) makes clear that any agreement which permits IVGID to relocate its effluent pipeline under TTD’s proposed bike path must be the subject of “a future agreement” (in other words, nothing more than an agreement-to-agree which is no agreement at all);

4. Thus if IVGID is permitted to relocate its effluent pipeline under TTD’s proposed bike path, there is no agreement to the effect of what portion of TTD’s BUILD grant application, if approved, will be applied to IVGID’s costs of relocating the proposed bike path;

5. If IVGID is permitted to relocate its effluent pipeline under TTD’s proposed bike path, there is no agreement what costs IVGID will be assessed, future maintenance responsibilities, etc.;

6. For all of these reasons the project summary for phase II of the effluent pipeline project\(^12\) expressly does not designate relocation under TTD’s proposed bike path. Rather, it states that “the Export line will be replaced (and)...mov(ed)...to the center of the Southbound travel lane” of State Highway 28;

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\(^7\) Attorney Guinasso revels in the fact he can manipulate words and facts to make them state something other than the truth. And page 2 of his response to my OML complaint (see page 496 of the 2/9/2019 Board packet) is a good example. There he wrongly represents that “Chair Kendra Wong signed (her) letter of support...consistent with (and)...in furtherance of the (Board’s)...October 30, 2014...amend(ment) to...the Interlocal Agreement.” For the OAG to have fixated upon this alleged assertion of fact to the exclusion of the language in the amendment itself, was error.

\(^8\) See page 492 of the 2/9/2019 Board packet.


\(^12\) See pages 509-510 of the 2/9/2019 Board packet.
7. Moreover, whatever the amendment actually provides, Article II, ¶2\textsuperscript{11} makes clear that either side “reserve(s) the right to...terminate (it)...for any reason (whatsoever) upon (a mere) thirty...day(s) written notice;”

8. And whatever the amendment actually provides, Article II, ¶2\textsuperscript{11} makes clear that either side may unilaterally decide to “discontinue participation in any future phases of the (TTD’s) co-alignment project;”

9. And whatever the amendment actually provides, Article II, ¶7\textsuperscript{13} makes clear that “nothing contained (there)in...shall be deemed (n)or construed to create...any liability for one agency...with respect to the indebtedness, liabilities, and obligations of the other;” and,

10. And whatever the amendment actually provides, Article II, ¶13\textsuperscript{14} makes clear it “constitutes the entire agreement between the parties and (it) is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and other agreements that may have been made in connection with the subject matter hereof...(And moreover,) unless otherwise expressly authorized by the terms of this agreement, no modification (n)or amendment...shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.”

Thus Chairwoman Wong’s execution of her July 6, 2018 letter to the USDOT could not possibly have been consistent with the intent of the Board’s prior actions related to the Interlocal Agreement and subsequent amendment to that agreement with TTD. Which means there is no justification for the OAG’s conclusion.

**Why I Disagree With the OAG’s Conclusion Chairperson Wong’s July 6, 2018 Letter to the USDOT Did Not Obligate Nor Commit the Board to Payment of Any Money:** The OAG concluded that Chairperson Wong’s “Letter of Support...did not legally obligate or commit the (IVGID) Board to payment of any money.”\textsuperscript{6} I disagree.

First of all, Ms. Wong’s July 6, 2018 letter was signed by her as “Chairwoman (of the)...Incline Village General Improvement District(s)...Board of Trustees.” The clear import of her words was that she was signing the letter on behalf of the IVGID Board as a whole. How possibly could anyone have known that she was acting unilaterally without Board knowledge or consent?

Second of all, if Ms. Wong’s intent were merely to voice “support” for TTD’s Build Grant application, then why the need to make reference to the fact that IVGID had funds “available as a match for (TTD’s) BUILD grant?” The answer to this question reveals the letter was intended to voice far more than mere support for TTD’s BUILD grant application.

Third of all, Ms. Wong’s inclusion of pointed language to the effect that “IVGID has $7.5 million dollars available as a match for (TTD’s) BUILD grant” was clearly intended and so understood to send

\textsuperscript{13} See page 337 of the 11/13/2018 Board packet.

\textsuperscript{14} See page 338 of the 11/13/2018 Board packet.
the following message: if TTD’s BUILD grant application is granted, IVGID will match that grant with up to $7.5 million.

The OAG’s conclusion this language did not legally obligate nor commit the IVGID Board to payment of any matching funds, is unsupported by fact or law. Had the TTD’s BUILD grant application been granted and the USDOT asked for evidence of IVGID’s matching funds, does anyone honestly believe IVGID/TTD would not be subjected to legal consequence if IVGID did not provide that evidence/those funds,?

Given the answer is clearly “no,” the OAG’s conclusion that Chairperson Wong’s “Letter of Support...did not legally obligate or commit the (IVGID) Board to payment of any money”\textsuperscript{6} is neither supported by law or fact. Which means there was no justification for the OAG’s conclusion.

Why Have Staff Agendized This Matter for Possible Action? Take a look at the way agenda item J(1)(a)\textsuperscript{4} is described: “Possibl(e) review and discuss(ion of the)...OAG(‘s) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – Finding by OAG of no violation...This item is included on this agenda in accordance with NRS 241.0395.” Take a look at the OAG’s letter\textsuperscript{15}. Do you see the words “findings of fact and conclusions of law” stated anywhere? Bueller, Bueller, Bueller\textsuperscript{16}. The answer is “no” because the letter doesn’t represent findings nor conclusions; it’s simply a letter.

Moreover, NRS 241.0395 does not mandate that letters like the OAG’s subject letter be placed on the agenda and “treated as supporting material.” Rather according to NRS 241.0395(1), only when the OAG “makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, (must) the public body...include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law.” Do you see the words “action in violation of any provision of” NRS 241 stated anywhere in the OAG’s letter\textsuperscript{15}? The answer is “no” because staff have described the letter as “finding by OAG of no violation,” and the letter itself doesn’t find that the IVGID Board has violated NRS 241.

So Why Have Staff Gratuitously Agendized the OAG’s January 18, 2019 Letter for This Meeting? We’ve had this discussion before. It’s called propaganda! Staff want to use every opportunity possible to marginalize critics like me. So whenever there’s anything complimentary of staff or the Board, staff “cheerleaders” are quick to publicize it (and in bold, italicized print no less). Yet whenever there’s anything detrimental to staff or the Board that warrants or mandates publication to the public, the agenda is worded in a misleading or deceitful manner, we hear explanations and excuses rather than placing blame where it should be placed, and critics are attacked as nothing more than a small group of dissidents\textsuperscript{17} in order to marginalize their message. As

\textsuperscript{15} See pages 491-493 of the 2/6/2019 Board packet.

\textsuperscript{16} See https://www.youtube.com/watch?v=f4zyjLyBp64 from the movie “Ferris Bueller’s Day Off.”

\textsuperscript{17} As should be demonstrable from the election, this “small group of dissidents” has now grown to nearly 2,300 residents!
an example of what I am talking about, the reader is invited to look at the agenda for the Board’s March 13, 2018 special meeting\textsuperscript{18} as well as item G(4) to this agenda\textsuperscript{19}.

Rather than acknowledging the OAG’s Findings of Fact and Conclusions insofar as an actual OML violation in File No. 13897-257, agenda item G(4) agendized the filing of the equivalent of a new lawsuit aimed at setting aside those findings and conclusions. Does the agenda inform the public that there were actual violations of the OML? Does it use italicized and bold print to inform the public that here there were in fact \textit{Open Meeting Law Violations}? Do you think these omissions were innocent, inadvertent and unintentional\textsuperscript{20}?

Ladies and Gentlemen, the deeper one digs, the dirtier it gets. NEVER does one reach a core of truth nor goodness insofar as IVGID senior management is concerned. The entire system we know as IVGID is built upon lie after lie after lie perpetrated by un-elected staff who are more committed to themselves, their public employee colleagues, and a select number of special interest groups, rather than the Board, the public and local property/residential dwelling unit owners (who involuntarily subsidize all of this) they were hired to serve. This is the IVGID "way." The IVGID "culture." The truth as to where your Rec Fee is really spent\textsuperscript{21}. And another example of the reason why that fee will NEVER, NEVER be eliminated or reduced.

Naysayers will argue that members of the public who make OML complaints, such as the one the subject of this written statement, are the problem. They will assert that critics like me are interfering with our public employees’ jobs. But did they ever stop to think that if staff’s actions were truly open, transparent and lawful, there would be little need for anyone to file an OML complaint? And if there were little need to file an OML complaint, there would be little need to pay attorney Guinasso to defend them\textsuperscript{22}. And have naysayers stopped to think that if the Board did its job\textsuperscript{23} of

\textsuperscript{18} See the agenda prepared by staff in anticipation of this Board’s March 13, 2018 special meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Special_3-13-2018.pdf (“the 3/13/2018 Board packet”)]. That agenda is attached as Exhibit “A” to this written statement, and I have placed an asterisk next to the description of agenda item F(2).

\textsuperscript{19} See page 3, the agenda portion of the 2/6/2019 Board packet. A copy of this page is attached as Exhibit “A” to this written statement, and I have placed an asterisk next to the item description.

\textsuperscript{20} If so, give me a call. I’ve got a couple of publicly owned bridges for sale.

\textsuperscript{21} The reader’s attention is directed to pages 209-215 of the 2/6/2019 Board packet. There attorney Guinasso (he is identified as an author of the memorandum) asks that the Board approve the expenditure of $5,000 on such a lawsuit. Given I have demonstrated on so many occasions before that IVGID budgets to overspend nearly $7 million more, annually, than the revenues it assigns to our recreation and beach venues, and this overspending is subsidized by the Recreation (“RFF”) and Beach (“BFF”) Facility Fees, the subject $5,000 is being paid by the RFF.

\textsuperscript{22} Attorney Guinasso will disingenuously retort that IVGID is not being charged anything to defend OML complaints against the district because that defense is included in his monthly retainer.
supervising staff\textsuperscript{24} and ensuring that the NRS is adhered to\textsuperscript{25}, there would be no need for members of the public to do the Board’s job? Thus the retort from naysayers lacks credibility.

**Conclusion:** This episode is yet another example that we have a Board in name only. The GM acts without Board approval, and then points to a resolution staff drafted which gives him the power to do what he does. The attorney files and prosecutes lawsuits without Board approval, and then points to a policy staff drafted which gives him the power to do what he does. The Board chairperson acts in the name of the Board without first obtaining its approval, and then asserts she hasn’t acted.

How many tens of thousands of dollars has attorney Guinasso cost the public with his unilateral and wasteful acts on the District’s behalf? How many hundreds of thousands of dollars has GM Pinkerton cost the public with his unilateral and wasteful acts on the District’s behalf? How many tens of thousands of dollars of unreported staffing costs have been wasted on Chairperson Wong’s unilateral acts on the District’s behalf? And now that the TTD’s BUILD grant application has been denied, how many hundreds of thousands of dollars have been wasted chasing this co-location pipe dream rather than replacing phase II of the effluent pipeline which was supposed to have been

However, that monthly retainer totals a minimum of $10,000/monthly. Not only is this is an outrageous sum for a general improvement district to incur, but if the defense of OML complaints were not included in the services provided for this retainer, don’t you think that retainer amount would be considerably less. In fact to prove the point, look at pages 33-37 of the 2/6/2019 Board packet. Here staff attempt to justify a 20% increase in attorney Guinasso’s monthly retainer fee (proposed to be $12,000) because of “the substantial amount of [additional (i.e., responses to OML complaints)] service provided under the (current) retainer.” In fact, listen to this language from page 37 of the 2/6/2019 Board packet: The “proposed agreement (see ¶¶6.3.3 and 6.3.3.1 on page 49 of the 2/6/2019 Board packet) includes (only) one OML complaint response every six months for a total of two...per calendar year. If there are additional OML complaints filed in excess of this limit, the proposed agreement includes a provision/charge (“a flat rate of $2,500”) for that scenario.” In other words, attorney’s disingenuous retort can no longer be made!

\textsuperscript{23} Given: NRS 318.185 instructs that “the board shall have the power to prescribe the duties of (its) officers, agents, employees and servants;” NRS 318.175(1) instructs that “the board shall have the power to manage, control and supervise all the business and affairs of the district;” NRS 318.210 instructs that “the board shall have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter;” and, NRS 318.015(1) instructs that “for the accomplishment of these purposes the provisions of this chapter (NRS 318) shall be broadly construed;” the Board is required to supervise its staff.

\textsuperscript{24} Remember, staff and their “fixer” attorney Guinasso have indoctrinated Board members into believing they have no powers other than making policy.

\textsuperscript{25} Given NRS 318.515(1)(b) instructs that corrective action may be initiated where “the board of trustees of the district is not complying with the provisions of this chapter (n)or with any other law,” the Board is required to ensure that the NRS is adhered to.
commenced four years ago\textsuperscript{26}. Why have a Board and why have an OAG which is supposed to enforce the OML by penalizing Board members who commit public funds without first obtaining Board approval at a meeting publicly noticed?

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

\textsuperscript{26} The reader's attention is directed to my separate written statement submitted in response to staff's utility rate study.
NOTICE OF MEETING

The special meeting of the Incline Village General Improvement District will be held starting at 11:30 a.m. on Tuesday, March 13, 2018 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

Time Certain - 11:30 a.m. - A presentation will be given to the Board of Trustees by State of Nevada, Ethics Commission, Executive Director Nevarez-Goodson. This presentation is informational/educational in nature.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

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

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

D. APPROVAL OF AGENDA (for possible action)

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

-OR-

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

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.yourtahoelife.com
E. APPROVAL OF MINUTES (for possible action)
   1. Regular Meeting of February 7, 2018

F. GENERAL BUSINESS (for possible action)
   1. Order of Affirmance from the Supreme Court of the State of Nevada, Aaron L. Katz, Appellant vs. Incline Village General Improvement District, Respondent, No. 70440 dated February 26, 2018 (Chairwoman Kendra Wong)

   2. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-260, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)

   3. Adoption of District Boundary Map as presented by the Washoe County Registrar of Voters – Map dated January 24, 2018 (Requesting Staff Member: General Manager Steve Pinkerton)

   4. Review, discuss, and possibly provide input to the Overview of 2018/2019 Operating Budget Presentation (Requesting Staff Member: District General Manager Steve Pinkerton)

      Order of Presentation:
      Beaches
      Recreation Programming
      Community Services Administration
      Tennis
      Parks
      Diamond Peak Ski Resort
      Golf Courses at Incline Village (Championship and Mountain)
      Facilities
      General Fund
      Internal Services
      Utilities

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

H. ADJOURNMENT (for possible action)
CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Thursday, March 8, 2018 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of March 13, 2018) was delivered to the post office addressed to the people who have requested to receive copies of IVGID’s agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. I VGID 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. I VGID’s Recreation Center
7. The Chateau at Incline Village

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

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

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

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

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

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

5. Review, discuss and possibly take action on Board’s Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong) – pages 411-415

6. Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong) – pages 416 - 444

7. Election of Board Officers for 2019 – effective at the end of this meeting – page 445

H. DISTRICT STAFF UPDATE (for possible action)

1. General Manager Steve Pinkerton – Verbal Report
   a. Mountain Golf Course Clubhouse
   b. Pending FEMA Reimbursements

I. APPROVAL OF MINUTES (for possible action)

1. Regular Meeting of January 23, 2019 – pages 446 - 489

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

This item is included on this agenda in accordance with NRS 241.0395 which reads as follows:

NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

2. The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.

(Added to NRS by 2011, 2384)
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
FEBRUARY 6, 2019 REGULAR IVDIGD BOARD MEETING – AGENDA ITEM C –
PUBLIC COMMENTS – FAILURE TO ACKNOWLEDGE FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE: OPEN MEETING LAW (“OML”) VIOLATION

Introduction: On January 17, 2019 the OAG issued its findings of fact and conclusions of law
(“findings and conclusions”) in File No. 13897-257. Those findings and conclusions determined that
IVDIGD had taken action in violation of NRS 241. Given NRS 241.0395(1) instructs that where the OAG
“makes findings of fact and conclusions of law that a public body has taken action in violation of any
 provision of this chapter, the public body must include an item on the next agenda posted for a
meeting of the public body which acknowledges the findings of fact and conclusions of law,” yet here
none has been agendized, this written statement is submitted.

Although the Agenda for the IVDIGD Board’s January 23, 2019 Meeting Could Have Included an
Item Acknowledging the OAG’s Findings and Conclusions, it Didn’t: The agenda for the Board’s
January 23, 2019 meeting was not posted nor published until January 18, 2019 at 9:00 o’clock A.M.¹
Given it has been my experience that when the OAG issues a letter or findings and conclusions in
response to the filing of an OML complaint it sends a duplicate copy as an attachment to an e-mail, I
expect IVDIGD’s attorney was given actual notice of the OAG’s findings and conclusions on January 17,
2019 by e-mail. That being the case, acknowledgment of the OAG’s findings and conclusions could
have been agendized for the Board’s January 23, 2019 meeting. Yet it wasn’t².

The Agenda For This Meeting Fails to Include an Item Which Acknowledges the OAG’s
Findings and Conclusions: Let’s assume for purposes of argument that IVDIGD didn’t have sufficient
time to agendize formal acknowledgment of the OAG’s findings and conclusions for the meeting held
January 23, 2019. The Board’s next meeting was the current one. Notwithstanding, nowhere have
staff included an item which acknowledges the OAG’s findings and conclusions³.

Take a look at the agenda for this meeting (Exhibit “B”). Do you see where formal
acknowledgment has been agendized for review, discussion and possible corrective action? Had it
been so agendized, wouldn’t it have read as agenda item J(1)(4) for this meeting² reads [i.e.,
“Possibl(e) Review and Discuss(ion of)…OAG File No. 13897-2(57) Findings of Fact and Conclusions of
Law – Open Meeting Law Complaint filed by Mr. (Frank Wright) – Finding by OAG of (OML)
Violation”]? I submit that because IVDIGD has demonstrated it knows how to agendize
acknowledgment of the OAG’s findings and conclusions, yet it didn’t do so insofar as the subject
findings and conclusions were concerned, demonstrates that staff have intentionally failed to

¹ I have placed an asterisk next to this fact on Exhibit “A.”
of this agenda is attached as Exhibit “A” to this written statement.
this agenda is attached as Exhibit “B” to this written statement.
agendize acknowledgment of the OAG’s findings and conclusions. And as a result, under the alleged professional guidance of attorney Guinasso and GM Pinkerton, the IVGID Board has committed another OML violation which is going to result in the filing of another OML complaint. Thank you professionals!

Agendizing an Item Which Asks Whether to Initiate a New Lawsuit is Far Different Than Agendizing “Acknowledgment” of the OAG’s Findings and Conclusions: Assuming IVGID argues differently, listen to what agenda item G(4) asks for: “that the Board...makes a motion to authorize District Legal Counsel to file a Petition for Judicial Review of the OAG’s...findings and conclusions.” It clarifies this request later in the memorandum in support as follows: “we are treating it like the initiation of a lawsuit.” Furthermore, listen to this: “we are...bringing (this motion) before the Board...in accordance with Policy 3.1.0.6...which reads (as follows:) ‘The General Manager must obtain Board...authorization, at a public meeting, to initiate any lawsuit.’” Does this sound like acknowledging and OML violation? Or does it sound like challenging the OAG’s findings and conclusions which have resulted in a violation by seeking approval to initiate a new lawsuit?

Simply stated, agenda item G(4) asks for authority to initiate a new lawsuit against the OAG.

Moreover, IVGID staff have demonstrated they know how to agendize “acknowledgment of the OAG’s findings and conclusions” pursuant to NRS 241.0395(1). Therefore if that were their intent, it would have been a very simple thing to have done. Yet it wasn’t done. Instead, IVGID staff have artfully described agenda item G(4) to sound as if it is complying with the OAG’s instructions, when in-truth-and-in-fact they haven’t. They “pooh-pooh” the OAG’s findings and conclusions by referring to them a “academic,” they assert that the OML complaint “was clearly meritless,” and as proof, they point to the fact IVGID has “not (been) penalized...in any way.”

The Purposes for Requiring the OAG’s Findings and Conclusions to Be Agendized, Have Been Circumvented: The reasons why OML violations are required to be agendized and acknowledged is at least threefold. First, to embarrass the governmental entity’s governing board by “clearly and

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6 Page 223 of the 2/6/2019 Board packet states as follows: “the Board must place an item on its next Board Meeting agenda in which the Board acknowledges the present Findings of Fact and Conclusions of Law (“Opinion”) which results from the OAG investigation in the matter of OAG File No. 13897-257.”

7 See page 211 of the 2/6/2019 Board packet.

8 See page 210 of the 2/6/2019 Board packet.
completely” acknowledging to the public that they have committed an OML violation. Does IVGID sound embarrassed?

Second, this notice presumably gives the public the opportunity to question their board to why the violation occurred in the first place, in a public meeting setting? If IVGID staff won’t even acknowledge that an OML violation occurred, how can the public question their board as to why it occurred?

Finally, this notice presumably gives the Board the opportunity to apologize to the public and adopt measures to ensure that similar future violations do not occur. Do staff sound as if they are apologizing?

These lofty purposes are thwarted when formal "acknowledgment" is deceitfully worded as it has in this instance. Here IVGID staff’s intent has been to hide the fact its Board has committed an OML violation. Instead it wants to advance the narrative that it is the victim of OAG findings and conclusions that re in excess of the OAG’s powers, and it is acting in the public's best interests to reverse what they complain is an injustice.

**Listen to Attorney Guinasso’s Misstatement of Fact (aka “Do as I Say, Not as I Do”):** "IVGID has a record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.” Really? Is that what IVGID staff have done here?

**Conclusion:** Now that the OAG has concluded there are REAL problems here in Incline Village/ Crystal Bay, the reader can see how staff work to hide this fact from the public through their deceit, misrepresentation(s), misuse of the vehicles of public communication, mislabeling of agendas, and outright propaganda (what they disingenuously call "transparency"). Board members can stick their collective heads in the sand and deny there are problems in River City (because you can "bring a horse to water, but you can't make him drink"). Or they can defer to the biased explanations from a less than forthright staff and attorney who are part of the problem. Or they can look for ways to attack and marginalize critics like me who are nothing more than messengers, making us the focus of attention rather than the issues we have identified – here staff’s failure to agendize acknowledgment of the OAG’s findings and conclusions.

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

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9 NRS 241.020(2)(d)(1) states as follows: "The notice (for)...all meetings must...include...an agenda consisting of...a clear and complete statement of the topics scheduled to be considered during the meeting."

10 See page 498 of the 2/6/2019 Board packet. I have attached a copy of that page with an asterisk next to the quoted language as Exhibit “C” to this written statement.
EXHIBIT “A”
NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on Wednesday, January 23, 2019 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

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

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

D. APPROVAL OF AGENDA (for possible action)

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

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.
E. REPORTS TO THE BOARD OF TRUSTEES*

1. Verbal Legislative Update from Tri-Strategies representative(s)

F. CONSENT CALENDAR (for possible action)

1. Review, Discuss, and Possibly Award a Construction Contract for the ADA Access for On-Course Restrooms Project – 2017/2018 Capital Improvement Project: Fund: Golf; Division: Mountain Golf; Project #: 3241BD1402; Vendor: Calbre Grading and Paving in the amount of $99,395 (Requesting Staff Member: Engineering Manager Charley Miller)

G. GENERAL BUSINESS (for possible action)

1. Utility Rate Study Presentation – 2019 (Requesting Staff Member: Director of Public Works Joe Pomroy)

2. Review, discuss and possibly take action on Board’s Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong)

3. Review, discuss and possibly take action on Title 1 (28 pages) of the IVGID Code (Requesting Trustee: Chairwoman Kendra Wong)

4. Election of Board Officers for 2019 – effective at the end of this meeting

H. DISTRICT STAFF UPDATE (for possible action)

1. General Manager Steve Pinkerton
   a. Status of Mountain Golf Course Clubhouse

I. APPROVAL OF MINUTES (for possible action)

1. Regular Meeting of December 12, 2018

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

K. BOARD OF TRUSTEES UPDATE (NO DISCUSSION OR ACTION) ON ANY MATTER REGARDING THE DISTRICT AND/OR COMMUNITIES OF CRYSTAL BAY AND INCLINE VILLAGE, NEVADA*
L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see Public Comment Advisory Statement above.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)

N. ADJOURNMENT (for possible action)

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, January 18, 2019 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of January 23, 2019) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
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. Harron, CMC
Susan A. Harron, 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.
NOTICE OF MEETING

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

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

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

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

D. APPROVAL OF AGENDA (for possible action)

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

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.
EXHIBIT "B"
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.
   b. Review, discuss and possibly set the date/time for April 10, 2019 at 6:00 p.m. for the public hearing on the proposed amendments to Sewer Ordinance #2 "An Ordinance Establishing Rates, Rules and Regulations for Sewer Service by the Incline Village General Improvement District" and Water Ordinance #4 "An Ordinance Establishing Rates, Rules and Regulations for Water Service by the Incline Village General Improvement District" that Includes the Utility Rate Increase

2. Review, discuss, and possibly approve a Grant of Easement to NV Energy on District Property APN: 128-352-01 (687 Wilson Way) for the Purposes of Constructing, Operating, Adding to, Modifying, Removing, Accessing and Maintaining Above and Below Ground Communication Facilities and Electric Line Systems (Requesting Staff Member: Director of Public Works Joe Pomroy)
G. GENERAL BUSINESS (for possible action)

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

2. Review, discuss, comment and possibly adopt a Popular Report format under 2018 Board Work Plan (Requesting Staff Member: Director of Finance Gerry Eick)

3. Review, discuss, and possible approve a three year agreement with Hutchison & Steffen for District General Counsel services at a cost of $12,000 per month or $144,000 per year (Requesting Trustee: Vice Chairman Phil Horan and Requesting Staff Member: General Manager Steve Pinkerton)

4. Review, discuss, and possibly request a Petition for Judicial Review of Office of Attorney General File No. 13897-257 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Frank Wright (Requesting Staff Member: General Manager Steve Pinkerton and District General Counsel Jason Guinasso)

This item is included on this agenda in accordance with NRS 241.0395 which reads as follows:

**NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.**

1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

2. The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.

(Added to NRS by 2011, 2384)

5. Review, discuss and possibly take action on Board's Work Plan: Set a date to reassess priorities (Requesting Trustee: Chairwoman Kendra Wong)
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)

7. Election of Board Officers for 2019 – effective at the end of this meeting

H. DISTRICT STAFF UPDATE (for possible action)

1. General Manager Steve Pinkerton – Verbal Report
   a. Mountain Golf Course Clubhouse
   b. Pending FEMA Reimbursements

I. APPROVAL OF MINUTES (for possible action)

1. Regular Meeting of January 23, 2019

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso
   a. Possibly review and discuss Office of Attorney General (OAG) File No. 13897-305 Findings of Fact and Conclusions of Law – Open Meeting Law Complaint filed by Mr. Aaron Katz – Finding by OAG of no violation

   This item is included on this agenda in accordance with NRS 241.0395 which reads as follows:

   **NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.**

   1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

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   (Added to NRS by 2011, 2384)

K. BOARD OF TRUSTEES UPDATE (NO DISCUSSION OR ACTION) ON ANY MATTER REGARDING THE DISTRICT AND/OR COMMUNITIES OF CRYSTAL BAY AND INCLINE VILLAGE, NEVADA*
L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see Public Comment Advisory Statement above.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)

N. ADJOURNMENT (for possible action)

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, February 1, 2019 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of February 6, 2019) was delivered to the post office addressed to the people who have requested to receive copies of IVGID’s agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

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

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

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Chairwoman Kendra Wong, speaking of the Letter of Support: “I did read the letter beforehand and made sure I wasn’t committing us (the District) to spending any funds, it wasn’t anything that would commit the District to anything that would be outside the role of an individual Board member.”

See Exhibit D (Livestream link of July 24, 2018 IVGID Board of Trustees Meeting, beginning timestamp 3:05:13, ending timestamp 3:05:28)

Absent a commitment of public money on an endeavor which requires the governing board’s approval, there can be no violation as alleged. Mr. Katz’s hypervigilance and hypersensitivity to District action have caused him to erroneously interpret both the Letter of Support and Nevada OML, in an effort construe any possible violation.

IV. Closing Remarks

Scope of Response

IVGID has not responded to each and every assertion submitted in Mr. Katz’s narrative. IVGID’s response has focused on whether there was a violation of the Nevada Open Meeting Law.

IVGID Did Not Violate the Open Meeting Law

In the event that this memorandum has failed to address an alleged violation of the Nevada Open Meeting Law due to the vagueness and ambiguity of Mr. Katz’s Complaint, IVGID denies that any such violation has occurred. IVGID has a record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

Please do not hesitate to call or write me if you have any further questions or need any further information.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Aaron Katz, A.G. File No. 13897-305.

Sincere regards,

HUTCHISON & STEFFEN, LLC
Jason D. Guinasso, Esq.

cc: Chairwoman Kendra Wong
    General Manager Steve Pinkerton
    District Clerk Susan Herron

JDG:ts
My comments tonight are in reference to the illegal initiation of a lawsuit by GM Pinkerton against Governance Sciences Group, Inc. (more commonly known in our community as Flash Vote)

Pinkerton claimed authority to issue a contract to initiate litigation with no specific dollar amount established.

Attorney Guinasso has stated that the GM had authority to initiate the lawsuit under Board’s contracts Policy 3.1.0(f).

GM Pinkerton’s authorization to enter into any contract, under that policy, is based on a numeric financial amount as DEFINED and stated in Nevada Revised statutes 332 for purchases and 338 for public works projects.

Under NRS 332 the GM would have authority to issue a contract less than $50,000 (providing the purchase is budgeted) without Board of Trustee approval.

Under NRS 338 the GM would have authority to issue a contract for up to $100,000 (providing the public works project is budgeted) without Board of Trustee approval.

Since the contract (work order under Guinasso retainer agreement) to initiate litigation had NO DOLLAR AMOUNT OR ANY AMOUNT WHICH COULD BE PREDETERMINED, THEN POLICY 3.1.0(f) COULD NOT BE APPLICABLE.

Since no dollar amount could be determined then the requirements for approval by the Board of Trustees could not be determined.

As anyone involved in litigation knows, the cost of litigation can never be a predetermined because it is unknown the extent of discovery which may be required and the unknown extent of filing by the opposing party in a litigation. Therefore the costs are always unknown.

Guinasso use of this policy is a RED HERRING.

The General Manager had no authority to unilaterally enter into any contract with any legal firm to engage in litigation where a predetermined dollar amount could never be established.

This was a simple case of circumventing the law to avoid public scrutiny over the expenditure of public money for litigation so IVGID could recover data from FlashVote that was never provided by IVGID to FlashVote. This litigation was nothing more than to inflict pain on a local business for cancelling a tiny $4,000 contract (which most money was returned by FlashVote to IVGID)

IVGID, GM Pinkerton and Attorney Guinasso with the assistance of three board members operates as a rogue agency, with illegal meetings, cavalier and illegal spending on legal costs, foolish spending on outside consultants, along with illegal reallocation of our utility funds.

With Mr. Horan’s questionable residency and Mr. Morris’ business bankruptcy, Mr. Guinasso’s defense of the indefensible, and Ms. Wong’s IVGID related litigation. IVGID’s run as a rogue agency may be skating on very thin ice. It may only be a matter of time before even IVGID’s cheerleading squad may abandon the gang of five. Nixon had his Watergate – Which stupid and illegal act will bring honesty and integrity back to IVGID.
We have a problem with our legal counsel.

First, the contract with his firm allows for billable hours related to litigation activities. In other words, if Mr. Guinasso restricts public documents or public records and a citizen sues the District, he and his firm gain additional revenue. This is clearly a conflict of interest, as I have mentioned to this board in the past. Therefore, I suggest the Board modify the legal services contract before you this evening and engage another firm for activities that are identified as billable services. This removes any real or perceived conflict of interest and in the end may save us money.

If it was his recommendation to move forward with the GSI litigation, he and Mr. Pinkerton violated Board Policy 3.1.0 – Contracts. This policy, is based on the amount as DEFINED advertising thresholds as stated in Nevada Revised statutes 332 for purchases and 338 for public works projects.

Under NRS 332 the GM has the authority to issue a contract less than $50,000 providing the purchase is budgeted. The GSI litigation was not budgeted nor was it a DEFINED contract amount. Cost of litigation is never be a predetermined contract amount because of the variable costs related to discovery and the unknown extent of filing by the opposing party.

Therefore according to Board Policy, the General Manager did not have the authority to unilaterally engage in litigation where a predetermined dollar is not defined nor budgeted.

Here is my suggestion. Think back. The District spent about $50,000 with Mr. Guinasso’s firm and the District received NOTHING in return. So, before deciding spend more public funds with Mr. Guinasso and his firm to argue the Attorney General ruling, consult another legal opinion. We all get second options or estimates in our personal lives, let’s do the same for tax paying citizens.
First, Item 1.b. The memo refers to a reserve fund set by Board Policy 7.1.0 and asserts a current target value of $1.88 million for the Utility Fund. This policy makes no mention of a "reserve fund" and only relates to the General Fund and the Special Revenue Funds. The Utility Fund is an enterprise fund and its working capital requirements must comply with Policy 19.1.0 and Practice 19.2.0. At the last meeting, both Trustees Horan and Dent required Mr. Eick to provide the calculations to support compliance with this Policy and Practice. It is not in the Board Packet. In addition, the Memo refers to funding for the Effluent Export Project. There is no such project—it has recently been invented by GM Pinkerton. The District has been collecting $2 million per year to fund the $23 million replacement of 6 miles of pipeline in SR 28. It is Effluent Pipeline—Phase II. And just in case you missed it, the Utility Fund does not have enough revenues to cover the capital projects the Board has already approved. This Board cannot approve an increase in water and sewer rates based upon a Rate Study that is both misleading and inaccurate.

Secondly, I object to retaining the services of Counsel Guinasso. Over the last four years, he has failed to ensure that the Board and Staff comply with Nevada Law and its own Policies, Practices, Ordinances and Resolutions. He has taken actions in defiance of Board direction. He has failed to exercise proper due diligence and has rendered incorrect legal opinions on so many important matters I will only have time to list a few. The Parasol Debacle; His participation in the sale of an unbuildable lot to a private buyer in violation of the agreement with Washoe County; His concealment of public records and his claim of attorney-client privilege to emails that are not in fact privileged. The latter has resulted in a citizen’s lawsuit and the use of our public money to keep a citizen from receiving those very same public records. Under his direction, there have been more than 16 Open Meeting Law violations. The latest are the most egregious—the Attorney General found that Trustees Wong, Horan, and Morris took action in a closed session with Legal Counsel to initiate a lawsuit. Had the AG been notified within 60 days of the filing, they would have voided this action in District Court. The AG also stated that contrary to Guinasso’s claims, the GM and Counsel did not have the authority to initiate the lawsuit and expend public funds without Board approval in a public meeting. This cost the District more than $70,000—more than $50,000 landed in the pocket of Mr. Guinasso and his law firm; it harmed a local business, deprived our citizens from participating in independent surveys; and unlawfully excluded two Trustees from conducting the public’s business publicly.
This Attorney should have been terminated months ago. We cannot afford three more days, let alone three more years of his malpractice.
IVGID Corruption: “The dishonest or fraudulent conduct by those in power.”

Part I

Trustees Wong, Horan and Morris along with IVGID’s Fixer Jason Guinasso Strike Again and the Office of the Nevada Attorney General Strikes Back

On January 17, 2019 the Office of the Attorney General (“OAG”) determined that Trustees Wong, Horan and Morris violated the Open Meeting Law (“OML”) by taking action to authorize the initiation of a Lawsuit during its closed Attorney-Client Session with Counsel Guinasso on April 28th, 2017. The OAG further notes that “had it timely learned of the Open Meeting Law (“OML”) violation regarding the initiation of the Lawsuit, that it would have filed suit in district court to have the action declared void.”

The “Lawsuit” referenced is the litigation IVGID waged against Governance Sciences Group (“GSG”), the parent company of FlashVote, on May 16th of 2017. The secret April meeting occurred late at night after a regularly scheduled Board Meeting. At that time, Trustee Callcrate was not in attendance and Trustee Dent was asked to leave before the Board majority took unlawful action. Along with Trustees Dent and Callrate our citizens were kept in the dark when Jason Guinasso filed the injunction to stop FlashVote from conducting independent surveys and demanding that GSG return Customer Data IVGID claimed to have given to FlashVote.

When our citizens learned of this lawsuit which the Board did not notice, authorize and appropriate public funds in a public meeting as required by Nevada law, Fixer Guinasso stated that Board Policy 3.1.0, Resolution 1480 and Legal Counsel’s Retainer Agreement allowed the General Manager, using his under $50,000 discretionary spending authority, to engage Mr. Guinasso and his firm to initiate and prosecute this litigation. Thus, according to the Fixer, Nevada law did not apply. The OAG later invalidated the Fixer’s assertion and in their Findings of Fact stated: “Neither the Board’s Policies and Practices, its Policy and Procedure Resolutions, nor its retainer agreement with legal counsel grant the authority to the Board’s General Manager or legal counsel to initiate lawsuits on behalf of the Board.”

As the months wore on, Counsel Guinasso continued to demand customer data that a public records request definitively showed did not exist, and racked up more legal bills to obtain a preliminary injunction which stopped FlashVote from doing any independent surveys of our Incline Village/Crystal Bay citizens until the LAWSUIT was resolved. FlashVote would not buckle and appealed the injunction to the Supreme Court. The Fixer hit the limits of the General Manager’s alleged $50,000 discretionary spending authority and needed an extra $25,000 (for starters) to keep his legal meter running and the unlawful LAWSUIT going. In order to do so, a
public meeting was required. The public would finally be informed. However, before that happened, on November 15, 2017, after a regularly scheduled Board Meeting, Chair Wong and the Fixer once again convened a closed Attorney-Client Session. This time there were witnesses when the Fixer told Trustee Dent that he could not attend due to an “alleged” conflict of interest, and Trustee Callicrate objected to any meeting being held that would violate Nevada Open Meeting Law. As a consequence, the second unlawfully convened meeting with Trustees Wong, Horan, Morris along with GM Pinkerton and other members of Senior Staff could not continue.

Shortly after, a citizen filed an Open Meeting Law Complaint. Through the OAG’s in-depth investigation and the citizen’s continued follow-up with additional recorded and written information, Trustees Wong, Horan and Morris’ violation of the Open Meeting Law in April of 2017 was discovered and the Fixer’s efforts at concealment along with his false statements to the Board, the Public, District Court and the OAG were revealed. The OAG stated: “After investigating the Complaint, the OAG determines that the Board violated the OML by failing to properly notice and approve the initiation of a lawsuit during a public meeting.”

As for the Fixer’s representations on behalf of the Board, the OAG stated:

“The Board argues that the authority to initiate the LAWSUIT was delegated to its General Manager and General Counsel through the Board’s Policies and Practices, its Policy and Procedure Resolutions, and its retainer agreement with legal counsel. However, a careful reading of the noted documents fails to support the Board’s claims.”

Unfortunately, the OAG’s findings of OML violations came too late as this unlawfully prosecuted lawsuit was ultimately settled (without the additional $25,000 the Fixer requested) but at a great cost:

1) The Fixer, a corrupt attorney, lined his and his law firm’s pockets.
2) Our citizens were out $70,000 on an unlawful, meritless lawsuit.
3) FlashVote had to spend money defending an unlawful, meritless lawsuit.
4) Approximately 900 IV/CB citizens were deprived of using a good survey system to express their opinions
5) Trustees Dent and Callicrate were silenced as Trustees Wong, Horan and Morris used the FIXER as a legal shield to manufacture reasons to exclude their participation and oversight.
6) Wong bragged in her re-election campaign that she spearheaded the litigation, which we now know was both unlawful and unauthorized.
7) IVGID got NOTHING not even the non-existent customer data they claimed to have given to FlashVote. It wasn’t even mentioned in the settlement. What they got was the ability to censor public opinion and the pleasure of crushing Trustees and businesses that challenge their corrupt activities.
2019/2020 Water and Sewer Utility Rate Study - A DISGRACE

At the January 23, 2019 Board of Trustees meeting, Director of Public Works Joe Pomroy presented the 2019/2020 Utility Rate Study. This Study provides the foundation for the Board to approve the District's annual water and sewer rates and other utility customer charges. Mr. Pomroy provided Staff's estimates of Revenues, Expenses, Capital Costs and Debt Service for the next five years. Based upon those estimates, he recommended a 4% increase in the Water and Sewer rates effective May 20, 2019. He also recommended that these rates continue to increase by 3.5% annually for the next four years. Additional customer charges for backflow testing, service calls and inspection will also be raised by an unstated amount along with a 5% increase to water and sewer connection fees.

According to the District, this Study is prepared to ensure fiscal responsibility and sustainability of service capacities by maintaining EFFECTIVE FINANCIAL POLICIES. If that is the dominant objective, this Study falls short.

For some time, we have been reporting that the Utility Fund is dangerously underwater and the appropriate maintenance and replacement of our vital infrastructure is in jeopardy. We have pointed to the District's inadequate working capital, the use of ratepayer money set aside to fund Phase II of the effluent pipeline being siphoned off to fund other projects and dare we say it: fraudulent accounting and reporting practices. The Board Packet Memorandum and the Study presented does not provide corrective measures to our concerns. In fact, with the addition of too many false statements to count, it raises more alarms.

First, the District has failed to comply with the appropriate level of working capital as required by Board Policy 19.1.0 and Board Practice 19.2.0. For your reference, the Policy and related Practice has two parts:

The first part is to have working capital in an amount that will cover 45 to 90 days of operating expenses; one year of interest on debt; and one year of depreciation, based on the average of the past three years. Based upon the 2018 audited
financial statements calculations for working capital should range between $4,000,000 and $4,900,000.

The second part is the accumulation of other resources. These other resources are the $2 million of ratepayer money collected annually to accumulate $23 million to fund the replacement of 6 miles of the effluent pipeline in State Route 28. This project is Phase II of the Effluent Pipeline. The Practice states: The Utility Fund may have "resources accumulated in support of Debt Service or the Multi-Year Capital Plan IN ADDITION to Working Capital since these needs extend beyond the measurement period of one year." According to Note 19 of the 2018 audited financial statements the commitments for Multi-Year projects approved by the BOT is $9,765,603 with the largest being $8,765,603 for Phase II of the Effluent Pipeline.

To be in compliance with both parts of the Practice would require the Utility Fund to have between $13,703,000 and $14,665,603. However, the working capital plus the cash equivalent long term investments reported in the 2018 audited financial statements amount to only $9,703,020. **This means the Utility Fund is short between $4,061,000 and $4,962,000.** There isn’t even adequate money to fund the previously approved capital projects.

At the Meeting, Trustee Dent asked Mr. Pomroy if Board Policy and Practice 19.1.0 and 19.2.0 were being followed. Pomroy fielded the question to Director of Finance Eick. Mr. Eick stated the Utility Fund has $7,000,000 of working capital and it is more than ample. He apparently decided to pick and choose only the working capital portion of the Board practice and did not disclose any thing about the reserves required for multi-year projects. Mr. Dent asked for the calculation Staff used to comply with Policy 19.1.0 and Practice 19.2.0. Mr. Eick said he could not get it done until February 26, 2019. **This calculation would take less than one hour to complete.** Trustee Horan stated that the calculation must be done before the February 6th Board meeting. GM Pinkerton said it would be. Now let’s face it, Mr. Eick was attempting to get this pushed off until after the February 6th meeting when the Board is scheduled to make changes to the Rate Study before approving new rates and setting the date for a public hearing.
ago with a 4% annual inflation rate and a start time of 2021. We can rest assured that construction cost inflation has far exceeded the estimate, yet Staff has not commissioned a new estimate.

However, Mr. Pomroy states Phase II could cost less than the $23,000,000 budgeted. He cites potential Grant support from the US Army Corp of Engineers ("USACE") or some savings from co-locating the pipeline with the Tahoe Transportation District’s ("TTD") proposed bike path or "savings" if we don’t have to replace ALL six miles of the PIPELINE.

Now for the Facts. The USACE 595 program has some remaining funds to be shared with six other states. IVGID lobbyist Marcus Faust has been on retainer for many years to secure this funding. Results have not materialized. At the meeting, we learned that perhaps a million dollars could be thrown our way. There, however, is a possibility that a USACE Grant may be obtained to assist in funding the wastewater pond lining which is not part of the Phase II pipeline. The lining for the wastewater pond, which is crucial to providing effluent storage in the event of pipeline failure or replacement, is also omitted from the Study. And so are the costs which according to engineering estimates range between $500,000 and $3,200,000. The TTD bike path co-location project will likely go nowhere as TTD’s BUILD Grant application to the US Department of Transportation was not accepted. TTD must now wait for some future unknown funding program to surface. As for having savings of between $2,000,000 and $4,000,000 per mile of pipeline by not replacing it is quite a spectacular statement. Yes, you read that right. For every mile we don’t replace, we will save money.

This brings us to what exactly is the condition of ALL six miles of pipeline and an informed timeline for replacement. The PICA contract to "scope out" the condition of the 6 miles of pipeline scheduled to be replaced was completed last October. However, according to Mr. Pomroy, he does not have the skill set to read the submitted information; PICA does not have an engineering license to produce an analysis; and a US engineering firm must be hired to read PICA’s data and determine the condition of the entire 6 miles of Pipeline. We will have to wait for these results until this fall. Pomroy did state that 13,700 linear feet is in bad
condition but after two "scopes" we currently know nothing about the viability of the remaining 17,000 lf.

Now for the two big whoppers that should claim your attention. First, over the past few months the General Manager has come up with a new project called the Effluent Project. There are no project summaries for this invention, nor Board approval or discussion. According to GM Pinkerton, every expense he deems related to the entire effluent pipeline can be considered part of this Effluent Project. You will be surprised to learn that this Effluent Project has the same project number as Effluent Pipeline—Phase II. So, with a keystroke, any new or existing capital project can be labeled with the Phase II project number and be considered eligible for using the money collected from our ratepayers to specifically replace the remaining 6 miles of aging pipeline in SR 28.

For those who like to have accurate and complete cash flow statements this Study will leave you disappointed. There are three sheets which separately report the Budgeted Revenues and Expenses for the Water System, the Sewer System and the combined amount for both Systems. These pages provide ALL revenues along with expenditures for operations and debt service BUT EXCLUDE expenditures for capital projects. As such, any reader would assume that each system and their total are anticipated to have large excess cash flows of almost $5,000,000. Including capital projects of $980,000 for the Water System, $2,800,000 for the Sewer System and the $414,000 for shared projects would provide an accurate cash flow budget and be similar to the reporting in the State Budget. This appropriate and all-inclusive reporting would provide the reader with the actual cash flow or lack thereof planned for the new fiscal year. A reader could immediately see excess cash flow is less than $200,000. Considering there are no contingencies for unanticipated expenditures or any reserves or working capital to draw upon on, a contingency of only 1.6% on a Budget of $12,470,000 is fiscally irresponsible.

Was a rate study really done or was there a quick decision to raise water and sewer rates by 4% and then create numbers to back into a justification?
If this Rate Study is ultimately approved without addressing the working capital necessary to support a $600,000,000 infrastructure, then we are all worse off. AND when it ultimately comes time to replace the aging 6 miles of effluent pipeline, neither our ratepayer money collected to fund Phase II nor adequate reserves will be there. Trustees willing to approve this flawed Study and ignore its fallacies would be both negligent and irresponsible.
CHAPTER 195 - PARTIES TO CRIMES

NRS 195.010 Classification of parties to crimes. Parties to crimes are classified as:
1. Principals; and
2. Accessories.

NRS 195.020 Principals. Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor, whether the person directly commits the act constituting the offense or aids or abets in its commission, and whether present or absent; and every person who, directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor, is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him or her.

NRS 195.030 Accessories. Every person who is not the spouse or domestic partner of the offender and who, after the commission of a felony, destroys or conceals, or aids in the destruction or concealment of, material evidence, or harbors or conceals such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony.

NRS 195.040 Trial and punishment of accessories.
1. An accessory to a felony may be indicted, tried and convicted either in the county where he or she became an accessory, or where the principal felony was committed, whether the principal offender has or has not been convicted, or is or is not amenable to justice, or has been pardoned or otherwise discharged after conviction. Except as otherwise provided in this subsection and except where a different punishment is specially provided by law, the accessory is guilty of a category 

2. An accessory to a gross misdemeanor may be indicted, tried and convicted in the manner provided for an accessory to a felony and, except where a different punishment is specially provided by law, shall be punished by imprisonment in the county jail for not less than 30 days nor more than 6 months, or by a fine of not less than $100 nor more than $500, or by both fine and imprisonment.