

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

**TO:** Board of Trustees

**FROM:** Steven J. Pinkerton  
General Manager

**SUBJECT:** Review, discuss, and possibly authorize a three year contract for Federal Legislative Advocacy Services with Marcus G. Faust, P.C. in the amount of \$65,000 per year for three years for a grand total of \$195,000

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

**DATE:** April 23, 2019

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to authorize a three year contract with Marcus G. Faust P.C. in the amount of \$65,000 per year for three years for a grand total of \$195,000 for Federal Legislative Advocacy Services and authorize Staff to execute the necessary contract documents.

### **II. DISTRICT STRATEGIC PLAN**

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

### **III. BACKGROUND**

Mr. Faust has provided Federal Legislative Advocacy Services for the District for over fifteen years. The primary purpose of the legislative advocacy service is to secure funding for the District's Effluent Export Project and Watermain and Fire Flow Enhancement Improvement Project.

The District's efforts with Mr. Faust have led to receiving \$15.5 million dollars through the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016)

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Section 595 Program for the Effluent Export Project. The WIIN Act was formerly called the Water Resources Development Act. The District has also received \$6 million from the Lake Tahoe Restoration Act Section 108 Program for funding Environmental Restoration Projects that was matched with \$2 million of State of Nevada Funding for Mill, Incline and Third Creeks Restoration Projects. Mr. Faust has also worked with the legislative advocates for South Tahoe PUD (STPUD) in obtaining water infrastructure funding to improve Lake Tahoe public water systems for fire flow for the critical wildland urban interface communities in Lake Tahoe. The District has received over \$3.8 million in this funding from the US Forest Service through STPUD. Lake Tahoe public water systems have received over \$17 million in total funding to improve fire flows.

All told, these reimbursements have saved the District's residential and commercial ratepayer \$2,140 over fourteen years in utility rates plus the restoration projects have improved the stream environment zones (SEZ) of Incline Village and aided in the goal of restoring the clarity of Lake Tahoe.

The Effluent Export Project Phase II will replace the remaining six miles of aging pipeline within the Lake Tahoe basin at a budgeted cost of \$23 million. The District has already implemented a 45% total sewer CIP rate increase to collect the funds for this project if Federal Section 595 funding is not available or if it does not come available in time to construct the project.

Mr. Faust has worked with the Nevada Delegation and other western states on raising the authorization of the Section 595 Program of the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016). Nevada will be collaborating on Rural Section 595 with five other states, New Mexico, Montana, Wyoming, Idaho and Utah, who already have projects which qualify under Section 595. The new Section 595 Program increased the authorization limit by \$100 million over the previous limit to allow new annual appropriations through the Federal Budget process. Mr. Faust also got new language inserted into Section 595 that clarifies that funding caps do not apply to individual States and that unspent monies can be allocated to priority projects in any state. This was an extremely important piece of language to have added because the US Army Corps was not open to discussing a new Project Cooperation Agreement (PCA) because they had interpreted that Nevada had spent their allocation of funds under Section 595.

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In 2017 and 2018, Staff and Mr. Faust worked with the US Army Corps staff in Sacramento and US Army Corps staff in Washington on having bulletins prepared describing this new language change. This has allowed the District to pursue entering into a new PCA to utilize unspent monies in the current Section 595 Fund Balance.

In 2019, the primary objectives are to, enter into a PCA with US Army Corps to utilize unspent funds, appropriate new funds to Section 595 and maintain and increase funding for the watermain and fire flow enhancement funding through the US Forest Service Budget and the newly passed Lake Tahoe Restoration Act.

#### **IV. FINANCIAL IMPACT AND BUDGET**

The full amount of the contract is a water and sewer operating expense in the Utility Fund. It is included in the 2018-19 budget and is also in the proposed budget for 2019-20. The current and proposed utility rates are adequate to pay for this expense.

This item is placed on the Consent Calendar in accordance with Policy 3.1.0 (Consent Calendar) as it is included in the budget and meets budget.

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN INCLINE  
VILLAGE GENERAL IMPROVEMENT DISTRICT AND MARCUS G.  
FAUST, P.C.**

This agreement between the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (hereinafter referred to as the "IVGID"), with offices at 893 Southwood Boulevard, Incline Village, Nevada 89451-9425 and MARCUS G. FAUST, P.C., a professional corporation engaged in the practice of law, with offices at 332 Constitution Avenue, N.E., Washington, D.C. 20002 (hereinafter referred to as the "CONTRACTOR") is made this 1<sup>st</sup> day of May, 2019.

**RECITALS**

**WHEREAS**, in the judgment of IVGID Board of Trustees, it is necessary and desirable to employ the services of CONTRACTOR to assist IVGID with federal government actions concerning water and waste water management, infrastructure, federal lands, legislative appropriations, and grants in accordance with the "Scope of Services" section of this agreement; and

**WHEREAS**, CONTRACTOR has available and offers to provide the personnel necessary to provide the services set forth in the "Scope of Services" section of this agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**PART I- SERVICES**

- A. **SCOPE OF SERVICES TO BE PROVIDED:** CONTRACTOR shall consult and advise IVGID on public works, infrastructure, water resources, waste water, federal lands, and federal grant programs, including but not limited to:
1. Developing strategies to obtain and maximize federal funding for IVGID projects and programs.
  2. Coordinating funding, legislation and policy related activities with the United States Congress and federal agencies;
  3. Securing authorizations and funding from the United States Congress and federal agencies to implement IVGID'S projects;
  4. Maintaining direct and frequent contact with key United States Senators and Representatives;
  5. Advocating IVGID's interests during the United States legislative and regulatory process;
  6. Monitoring and information gathering with the Executive Branch and Congress with respect to all matters which IVGID may have interest in. Specifically, affecting IVGID, the development of water and wastewater policy within the Administration and Congress and the

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development of budgets for appropriations and such other matters of interest pertaining to IVGID.

7. Actively lobby the Congress and the departments and agencies of the Executive Branch of the government on behalf of the interests of IVGID, as directed by the General Manager or the Director of Public Works. This will involve arranging meetings for personnel of IVGID with officials or staff of these federal departments as may be necessary; the preparation of legal memoranda, Congressional testimony and briefing papers; assisting in devising and implementing strategy with respect to the vital interests and objectives of IVGID; liaison work with key members of the House and Senate Committees with jurisdiction over the Clean Water Act, Safe Drinking Water Act, Environmental Protection Agency, and the Southern Nevada Public Lands Management Act ("SNPLMA").
8. Providing regular briefings to IVGID as needed and travel to Nevada to meet with IVGID officials annually.
9. Providing office and administrative support services to IVGID personnel while in Washington, D.C.
10. Travel as may be necessary and authorized specifically by the General Manager or his designee on behalf of IVGID.

- B. **PAYMENT:** CONTRACTOR'S compensation for the services provided hereunder shall be \$5,417.00 per month for eleven months and \$5,413.00 for the twelfth month. CONTRACTOR shall submit the monthly fee invoice at the first of each month, beginning on May 1, 2019. IVGID shall reimburse CONTRACTOR for reasonable expenses incurred in connection with CONTRACTOR'S work at actual cost. Expenses that are to be reimbursed may include, but are not limited to; photocopying, postage, telephone, delivery, and telecopy charges. Expenses shall be reimbursed to CONTRACTOR on a monthly basis. All travel expenses shall be incurred only following written approval by IVGID General Manager or his designee.

**PART II – GENERAL PROVISIONS**

- A. **STATUS OF CONTRACTOR:** CONTRACTOR and IVGID have entered into this Agreement with the mutual understanding that CONTRACTOR is an independent contractor and not an employee of IVGID. Nothing contained in this Agreement shall be construed to make CONTRACTOR an employee, partner, or joint venture of IVGID for any purpose. CONTRACTOR warrants that it is free to enter into this Agreement and is not a party to any restrictive contract or agreement limiting its present or future right to contract with IVGID. CONTRACTOR agrees to hold IVGID harmless from any and all suits and claims arising out of any such preexisting restrictive agreement.

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CONTRACTOR understands and agrees that it is solely responsible for complying with state and federal requirements as they relate to taxes, Social Security contributions and any other requirements placed upon self-employed persons.

- B. This Agreement is for the non-exclusive use of CONTRACTOR'S services. Nothing contained herein shall prevent CONTRACTOR from contracting to provide lobbying or other services to other clients on a non-exclusive basis, subject to the Conflict of Interest provision herein.
- C. **CONFLICT OF INTEREST:** Both CONTRACTOR and IVGID shall use their best efforts to identify and notify each other of any potential conflicts of interest between IVGID and any other client of CONTRACTOR. CONTRACTOR shall notify IVGID in writing of any new potential clients that may conflict with this Agreement during the Term of the Agreement. Should a conflict of interest arise between CONTRACTOR and any other potential client, IVGID may either terminate this Agreement or request CONTRACTOR not contract with the potential client. IVGID shall have veto power over any agreement CONTRACTOR may enter into with any other company or group with interests adverse to IVGID.
- D. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, save and hold harmless IVGID and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of CONTRACTOR or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such CONTRACTOR to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by CONTRACTOR from and against any and all claims. It is agreed that CONTRACTOR shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. CONTRACTOR shall waive all rights of subrogation against IVGID, its officers, officials, agents and employees for losses arising from the work performed by CONTRACTOR for IVGID.



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1, 2019 and extend for a period of three (3) years from this aforementioned date and shall terminate upon 30 days written notice by either party with or without cause.

- K. **GOVERNING LAW:** This Agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of Nevada. In addition, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Nevada shall be applicable and shall govern to the exclusion of the law of any other forum.
- L. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements. No waiver, modifications, additions or addendum to this Agreement shall be valid unless in writing and signed by both CONTRACTOR and IVGID.

IN WITNESS WHEREOF the parties have set the hands as of the 1st of May, 2019.

Incline Village General  
Improvement District

Marcus G. Faust, P.C.

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Steven J. Pinkerton  
District General Manager

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Marcus G. Faust, P.C.

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Kendra Wong  
Chairwoman, IVGID Board of Trustees

*Approved as to form:*

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Jason D. Guinasso, Esq.  
District General Counsel