

## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Indra Winqest  
District General Manager

**FROM:** Brad Underwood, P.E.  
Director of Public Works

**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 \$67,044 in year one, with a three year not-to-exceed amount of \$215,000.

**DISTRICT STRATEGIC PLAN:** Long Range Principle 5 – Assets and Infrastructure.

**DATE:** April 13, 2022

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to:

1. Authorize a three-year contract with Marcus G. Faust P.C. (MGFPC) in the amount of \$67,044 in year one, with a three year not-to-exceed amount of \$215,000 for Federal Legislative Advocacy Services.
2. Authorize Staff to execute the necessary contract documents.

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

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

- Maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- Maintain, procure, and construct District assets to ensure safe and accessible operations for the public and the District’s workforce.

### **III. BACKGROUND**

MGFPC has provided Federal Legislative Advocacy Services for the District for over eighteen years. The primary purpose of the legislative advocacy service is to

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secure funding for the District's Effluent Export Pipeline Project, Effluent Pond Lining and Watermain and Fire Flow Enhancement Improvement Projects.

The District's efforts with MGFPC have led to receiving \$15.5 million dollars through the Section 595 Program for the Effluent Export Project under 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. MGFPC 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. The District may receive an additional \$660,000 through the current Federal allocation of \$7 million to the Lake Tahoe Restoration Act for water infrastructure upgrades (specifically the Crystal Peak Waterline project). 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 ratepayers \$2,140 each 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.

#### *Incline Village Effluent Export Pipeline and Pond Lining*

The Effluent Export Project Phase II will replace the remaining six miles of aging pipeline that has reached its useful life expectancy within the Lake Tahoe basin at an estimated budgeted cost of \$45 million. The District has been collecting \$2 million annually for the project in the sewer CIP rates and will be using the fund balance to partially fund the project.

To date, millions of dollars has come to IVGID for the Effluent Export project through the U.S. Army Corps of Engineers (USACE) Section 595 Rural Western Water Program, which provides funding to Nevada and 6 other western states. MGFPC drafted language that was enacted into law to shape the way the program was managed to prioritize IVGID's projects and to ensure that program funds remain and keep coming to Nevada.

The USACE has been working with IVGID to execute agreements for the Pond Lining Project through the 595 Rural Water program. MGFPC worked with the Nevada Delegation to encourage USACE to allocate funding to the Pond Lining project from funds that were already appropriated for the program. At this time, the USACE has secured \$2 million to contribute to the Pond Lining project when the project is ready to advance.

MGFPC recommended that IVGID pursue \$10 million for the Effluent Export Pipeline through the Environmental Protection Agency's wastewater infrastructure program through the Congressional appropriations process. The Fiscal Year 2023 process has just begun and MGFPC will submit the project application to the Delegation in April. MGFPC will work with the Nevada Delegation to advance project funding for FY23.

In December 2021, MGFPC was notified that the Section 595 Rural Western Water program was almost maxed out and nearing the program's authorized spending cap. Given the project cost and scope of the Effluent Pipeline, it was clear that the cap needed to be raised to ensure the project could be funded through completion. Raising the authorized spending cap for the Section 595 program has several advantages for IVGID. The recently passed Infrastructure Investment and Jobs Act allocated \$5.15 billion over the next 5 years for the USACE's construction program. Unless the authorized spending cap is raised, the Section 595 program would be limited in the amount of *new* money it could absorb from the infrastructure bill and it will not be able to satisfy the growing demand for projects. Increasing the spending cap would ensure that there is enough funding authority so that the program can take on larger projects and successfully fund IVGID's Effluent Export Pipeline through completion.

To raise the funding cap, Congress must approve more funding authority to the USACE. MGFPC has been hard at work educating the Nevada Delegation and others about this issue. Congress is currently drafting the next iteration of the Water Resources Development Act that sets policy and funding levels for federal programs across the agency. In February, MGFPC worked with Congressman Mark Amodei, and Congresswomen Susie Lee, and Dina Titus to submit a request to the House Transportation and Infrastructure Committee to increase the authorized funding level for the Section 595 Rural Western Water Program. MGFPC also reached out to those members in the other relevant states that could benefit from this program to ensure there was support for the program from multiple states. During March, Congresswoman Lee testified at a committee hearing in support of doubling funding for this program. MGFPC will continue to advocate for increasing program funding for the Section 595 Rural Western Water Program.

MGFPC is also consistently tracking other federal funding opportunities for Incline Village with these two projects in mind. They provided IVGID with an overview of the Infrastructure Investment and Jobs Act as well as the American Rescue Plan Act (ARPA) funding opportunities. ARPA funds can be used for water infrastructure improvements. Local communities received funds in two batches. The next iteration of funding will come to Washoe County in May. The State of Nevada also received funds that can be used for water infrastructure projects.

### *Incline Village Fire Protection Act*

The *Incline Village Fire Protection Act* transfers two federal parcels (13 acres) to IVGID for public purposes including public recreation and hazardous fuels reduction and management. MGFPC has worked with the Nevada Congressional Delegation to support the legislation and the response has been very positive. Our legislative strategy is to put the bill on a legislative vehicle that is supported and has the best chance of passing during this polarized Congress.

Congressman Mark Amodei introduced the *Incline Village Fire Protection Act* as part of a Northern Nevada public lands and military modernization package (H.R. 5243). Congressman Amodei is seeking to put the bill in a package that is eligible to be incorporated as part of the National Defense Authorization Act, which is a *must pass* bill. We are working with Congressman Amodei to advance the bill through the legislative process. Senator Jacky Rosen has elected to include the Incline Village Fire Protection Act in the Washoe County public lands bill. That bill process is underway, and her office is working with multiple stakeholders to finalize the legislation.

It is no secret that legislation takes time, which is why IVGID staff have also pursued a strategy to obtain a special use permit from the U.S. Forest Service for these same parcels. Both strategies complement each other. The U.S. Forest Service can see the transfer of these parcels enjoys Congressional support.

### *Extending the Lake Tahoe Restoration Act to 2034 (H.R. 3132/ S. 1583)*

The Lake Tahoe Restoration Act of 2016 (LTRA) authorized millions of dollars for hazardous fuels management, invasive species management, water infrastructure upgrades for fire suppression, environmental restoration and storm water funding. The bill expires in 2024. Senator Catherine Cortez Masto and Congressman Mark Amodei are leading legislation to extend these programs another 10 years, through 2034. This will allow for continued federal investment in the Tahoe Basin, especially for projects that benefit Incline Village.

MGFPC has built positive relationships with the Nevada Congressional Delegation, U.S. Army Corps of Engineers, and U.S. Forest Service in representing IVGID. The Pipeline and Pond Lining projects are at a critical and timely stage for MGFPC to assist in achieving success in funding opportunities. The work plan priorities for this 3-year contract amendment are to pursue funding, Federal Legislation, and Congressional and Federal Agency support for the following:

- Effluent Export Pipeline and Pond Lining projects.
- Regional Water Infrastructure Upgrades for Fire Protection.
- Forest Health – Hazardous Fuel Reduction Activities in the Tahoe Basin

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- Incline Village Fire Protection Act (transfer of Federal parcels to IVGID).
- Lake Tahoe Restoration Act extension through 2034.
- Tahoe Water for Fire Suppression Partnership.

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.

#### **IV. BID RESULTS**

Not Applicable

#### **V. 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 2021-22 budget and is also in the proposed budget for 2022-23. The current and proposed utility rates are adequate to pay for this expense.

#### **VI. ALTERNATIVES**

Not authorize the contract for Federal Legislative Advocacy Services.

#### **VII. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

#### **VIII. COMMENT**

This contract has been reviewed by District General Counsel Joshua Nelson.

Attachments:

- Draft Professional Services Agreement

# INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT PROFESSIONAL SERVICES AGREEMENT

## 1. PARTIES AND DATE.

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the Incline Village General Improvement District, a Nevada general improvement district (“District”) and MARCUS G. FAUST, P.C., a professional corporation engaged in the practice of law, with offices at 300 New Jersey Avenue, NW, Washington, D.C. 20001 (Mailing Address: PO Box 15286, Washington, D.C. 20003) (“Consultant”). The District and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

## 2. RECITALS.

- 2.1 District. District is a general improvement district organized under the laws of the State of Nevada, with power to contract for services necessary to achieve its purpose.
- 2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional lobbying services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing lobbying services to public clients, is licensed in the State of Nevada, and is familiar with the plans of District.
- 2.3 Project. District desires to engage Consultant to render professional lobbying services for the District.

## 3. TERMS.

### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant shall consult and advise IVGID on public works, infrastructure, water resources, wastewater, federal lands, and federal grant programs, including but not limited to:

- A. Developing strategies to obtain and maximize federal funding for IVGID projects and programs;
- B. Coordinating funding, legislation, and policy related activities with the United States Congress and federal agencies;
- C. Securing authorizations and funding from the United States Congress and federal agencies to implement IVGID'S projects;
- D. Maintaining direct and frequent contact with key United States Senators and Representatives;
- E. Advocating IVGID's interests during the United States legislative and regulatory process;

- F. 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 development of budgets for appropriations and such other matters of interest pertaining to IVGID;
- G. 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");
- H. Providing regular briefings to IVGID as needed and travel to Nevada to meet with IVGID officials annually;
- I. Providing office and administrative support services to IVGID personnel while in Washington, D.C.; and
- J. Travel as may be necessary and authorized specifically by the General Manager or his designee on behalf of IVGID.

3.1.2 Term. The term of this Agreement shall be from [\[INSERT START DATE\]](#) to [\[INSERT ENDING DATE\]](#), 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.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Consultant. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement and such directions and amendments from District as herein provided. The District retains Consultant on an independent Consultant basis and not as an employee. No employee or agent of Consultant shall become an employee of District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the District's approval.

3.2.5 District's Representative. The District hereby designates [District General Manager Indra Winquest](#), or his designee, to act as its representative for the performance of this

Agreement (“District’s Representative”). The District’s Representative shall have the power to act on behalf of the District for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the District’s Representative or his or her designee.

- 3.2.6 Consultant’s Representative. Consultant hereby designates [Marcus G. Faust, P.C.](#), or his designee, to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.
- 3.2.7 Coordination of Services. Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District’s staff, consultants and other staff at all reasonable times.
- 3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of Nevada. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Washoe County Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.
- 3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. If required, Consultant shall assist District, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies. Consultant shall be liable for all violations of local, state and federal laws, rules and regulations in connection with the Project and the Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.



3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the District that the subconsultant has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance meeting the requirements set forth herein. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

- (A) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* A minimum of \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* A minimum of \$1,000,000 combined single limit (each accident) for bodily injury and property damage; and (3) *Industrial Insurance:* Workers' Compensation limits as required by the Labor Code of the State of Nevada. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability/Errors and Omissions:* Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, professional liability/errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability. "Covered Professional Services" as designated in the Professional Liability/Errors and Omissions policy must specifically include work performed under this Agreement.

Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement. Defense costs shall be payable in addition to the limits.

3.2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

- (A) Commercial General Liability. The commercial general liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide

waiver of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

- (B) Automobile Liability. The automobile liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide waiver of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- (C) Industrial (Workers' Compensation and Employers Liability) Insurance. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.
- (D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. Consultant shall guarantee that, at the option of the District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.6 Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less

than A-VII. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

3.2.10.7 Verification of Coverage. Consultant shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.8 Subconsultants. Consultant shall not allow any subconsultants or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the District that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subconsultants or subconsultants shall be endorsed to name the District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subconsultants or subconsultants.

3.2.10.9 Compliance with Coverage Requirements. If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Consultant or District will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may terminate this Agreement for cause.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

### **3.3 Fees and Payments.**

3.3.1 Compensation. compensation for the services provided hereunder shall be \$5,587.00 per month for the first year with an annual escalator each year thereafter in accordance with the Consumer Price Index for All Urban Consumers (CPI-U) increases. CONSULTANT shall submit the monthly fee invoice at the first of each month, beginning on \_\_\_\_\_, 2022. IVGID shall reimburse CONSULTANT for reasonable expenses incurred in connection with CONSULTANT'S work at actual cost. Expenses shall be reimbursed to CONSULTANT on a monthly basis. All travel expenses shall be incurred only following written approval by IVGID General Manager or his designee.

3.3.2 Payment of Compensation. Consultant shall submit to District a monthly itemized invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services and supplies provided since the initial commencement date of Services under this Agreement, and since the start of the subsequent billing periods, through the date of the invoice. Invoices shall be sent to

[invoices@ivgid.org](mailto:invoices@ivgid.org), with a copy to [sah@ivgid.org](mailto:sah@ivgid.org). District shall, within thirty (30) days of receiving such invoice, review the invoice and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized under this Agreement, or otherwise in writing by the District.

3.3.4 Extra Work. At any time during the term of this Agreement, the District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the District to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the District's Representative. Where Extra Work is deemed merited by the District, an amendment to the Agreement shall be prepared by the District and executed by both Parties before performance of such Extra Work, or the District will not be required to pay for the changes in the scope of work. Such amendment shall include the change in fee and/or time schedule associated with the Extra Work. Amendments for Extra Work shall not render ineffective or invalidate unaffected portions of this Agreement.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain accurate and complete books, documents, accounting records and other records pertaining to the Services for six (6) years (or longer as required by applicable law) from the date of final payment under this Agreement. Consultant shall make such records available to the District for inspection, audit, examination, reproduction, and copying at Consultant's offices at all reasonable times. However, if requested, Consultant shall furnish copies of said records at its expense to the District, within seven (7) business days of the request.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. The District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to the District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of this Agreement by District except for the amounts authorized herein.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the District may require Consultant to provide all finished or unfinished Documents and Data (defined below) and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**District**

Incline Village General Improvement District  
893 Southwood Blvd.  
Incline Village, NV 89451  
Attn: Indra Winquest

**Consultant**

Marcus G. Faust, P.C.  
PO Box 15286  
Washington, DC 20003

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data. All source code, reports, programs, manuals, disks, tapes, and any other material prepared by or worked upon by Consultant for the Services shall be the exclusive property of the District, and the District shall have the right to obtain from Consultant and to hold in District's name copyrights, trademark registrations, patents, or whatever protection Consultant may appropriate to the subject matter. Consultant shall provide District with all assistance reasonably required to perfect the rights in this subsection.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the District.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death,

in any manner arising out of, pertaining to, or relating to any negligence or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and Consultants arising out of or in connection with the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages, expert witness fees, and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its directors, officials, officers, employees, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided, including correction of errors and omissions. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents or volunteers.

- 3.5.6.1 Design Professional. To the extent required by NRS 338.155, Consultant's obligation to defend, indemnify, and hold District, its officials, officers, employees, volunteers, and agents free and harmless shall not include any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the District. Moreover, Consultant's obligation to defend, indemnify, and hold District, its officials, officers, employees, volunteers, and agents free and harmless from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant or the employees or agents of the Consultant which are based upon or arising out of the professional services of the Consultant. If the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to the District, as reimbursement for the attorney's fees and costs incurred by the District in defending the action, by the Consultant in an amount which is proportionate to the liability of the Consultant. This Section shall only apply to the extent required by NRS 338.155 and shall not otherwise limit Consultant's obligation to defend, indemnify and hold the District harmless as required under Section 3.5.6.
- 3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.
- 3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of Nevada. Venue shall be in Washoe County.
- 3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.
- 3.5.10 District's Right to Employ Other Consultants. The District reserves right to employ other consultants in connection with this Project.
- 3.5.11 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party.
- 3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior

written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

- 3.5.13 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.
- 3.5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to the District include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 3.5.15 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 3.5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.
- 3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.5.24 Limitation of Liability. The District does not and will not waive and expressly reserves all available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages.
- 3.5.25 Non-Appropriations. The District may terminate this Agreement, effective immediately upon receipt of written notice on any date specified if for any reason the District's funding source is not appropriated or is withdrawn, limited, or impaired.

- 3.5.26 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services. Consultant shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under any applicable law. Consultant is not currently engaged in, and during the duration of the Agreement shall not engage in, a Boycott of Israel. The term "Boycott of Israel" has the meaning ascribed to that term in NRS 332.065. Consultant shall be responsible for all fines, penalties, and repayment of any State of Nevada or federal funds (including those that the District pays, becomes liable to pay, or becomes liable to repay) that may arise as a direct result of the Consultant's non-compliance with this subsection.
- 3.5.27 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**OWNER:**  
**INCLINE VILLAGE G. I. D.**  
Agreed to:

**CONSULTANT:**  
**Marcus G. Faust, P. C.**  
Agreed to:

By: \_\_\_\_\_  
 Indra Winquest  
 District General Manager

By: \_\_\_\_\_  
*Signature of Authorized Agent*

\_\_\_\_\_  
*Print or Type Name and Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**Reviewed as to Form:**

\_\_\_\_\_  
 Joshua Nelson  
 District General Counsel

If Consultant is a corporation,  
 attach evidence of authority to  
 sign.

\_\_\_\_\_  
*Date*