



00093784201909314070070078

KAREN ELLISON, RECORDER

Assessor's Parcel Number:  N/A

Date:  JULY 5, 2019

Recording Requested By:

Name:  NATALIE WOOD, COUNTY MANAGER'S OFC

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$  N/A

**CONTRACT #2019.112**

(Title of Document)

## CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR

A CONTRACT BETWEEN

DOUGLAS COUNTY

AND

MARCUS G. FAUST, P.C.

FILED  
NO. 2019.112  
DATE 7-5-19  
DOUGLAS COUNTY CLERK  
MINDEN, NV  
BY [Signature] DEPUTY

This Contract for Services by an Independent Contractor (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada (the "County"), and Marcus G. Faust, a professional corporation ("Contractor"). The County and Contractor are at times collectively referred to hereinafter as the "Parties" or individually as a "Party."

**WHEREAS**, County, from time to time, requires the services of independent contractors;

**WHEREAS**, County believes it is beneficial to develop comprehensive federal legislation that will preserve the historic, cultural and natural resources of Douglas County; and

**WHEREAS**, Contractor represents that it is duly qualified, equipped, staffed, competent, ready, willing and able to perform the services required by County as hereinafter described.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Contractor mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Contract will become effective on the date it is approved and signed by representatives of both Parties and will remain in effect through June 30, 2020.

**2. INDEPENDENT CONTRACTOR STATUS.** The Parties agree Contractor will have the status of an independent contractor and that the Contract, by explicit agreement of the Parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted to the Parties, including the express understanding that Contractor, its officers, employees, and agents are not employees of the County and that:

There shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Contractor or the County to the public employee's retirement system;

- (5) Accumulation of vacation leave or sick leave; and
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

### **3. INDUSTRIAL INSURANCE.**

Contractor further agrees that, prior to the commencement of any work and as a precondition to any obligation of the County to make any payment under the Contract, Contractor will provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees that, prior to commencing any work under the Contract, Contractor will complete and provide evidence to the County that Contractor has made the following written request to Contractor's insurer:

Marcus G. Faust has entered into a contract with Douglas County to perform work through June 30, 2020, and requests that an authorized insurer provide to Douglas County: (1) A certificate of coverage issued pursuant to NRS 616B.627 and (2) Notice of any lapse in coverage or nonpayment of coverage that the Contractor is required to maintain.

The certificate and notice should be mailed to:

Douglas County  
Post Office Box 218  
Minden, Nevada 89423

Contractor agrees to maintain all required workers' compensation coverage throughout the entire term of the Contract. If Contractor does not maintain the required coverage throughout the entire term of the Contract, Contractor agrees that the County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County. For each six-month period this Contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to the insurer for the provision of a certificate and notice of lapse in, or nonpayment of, insurance coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that the County may order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County.

**4. SERVICES TO BE PERFORMED.** The Contractor will serve as consultant and government relations advisor to the County in Washington, D.C. and in Nevada as needed. In this role, Contractor will report to and receive guidance from the Douglas County Board of Commissioners or their designee and undertake such activities as directed including:

- A. Representation and advocacy for the interests of Douglas County relating to the enactment of federal legislation regarding the management and disposition of federally owned lands in Douglas County.

- B.** Representation and advocacy for the interests of Douglas County relating to water, wastewater, transportation, and public land issues with federal agencies and the Congress including the Nevada Congressional delegation and other matters as may arise.
- C.** Monitoring and information gathering with the Executive Branch and Congress with respect to all matters which Douglas County may have interest in. Specifically, Marcus G. Faust, P.C. will closely monitor and provide information on all matters directly affecting Douglas County, the development of policy within the Administration and Congress, and the development of budgets for appropriations and such other matters of interest pertaining to Douglas County.
- D.** Actively lobby the Congress and the departments and agencies of the Executive Branch of the government on behalf of the interests of Douglas County, as directed. This will involve arranging meetings for personnel of Douglas County 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 Douglas County; liaison work with key members of the House and Senate Committees with jurisdiction over the Departments of Interior, Transportation, Agriculture, the Environmental Protection Agency, and other agencies and federal statutes of interest to Douglas County.
- E.** Providing regular briefings to the Douglas County Board of Commissioners as needed and travel to Nevada to meet with Douglas County officials as requested.
- F.** Providing office and administrative support services to Douglas County personnel while in Washington, D.C.
- G.** Travel as may be necessary and authorized specifically by the Douglas County Board of Commissioners or its designee on behalf of Douglas County.

**5. PAYMENT FOR SERVICES.** Contractor agrees to provide the services set forth in Paragraph 4 at a cost not to exceed Fifty Thousand Dollars (\$50,000). Contractor is solely responsible for providing all materials, supplies, travel costs, insurance, and other costs necessary to perform Contractor's services. Contractor agrees to send a monthly invoice, not to exceed Four Thousand and Two Hundred Dollars (\$4,200) per month, to County for the services rendered to County no later than ten (10) days after the end of each month and payment will be due to Contractor within 30 days of the County's receipt of Contractor's invoice.

**6. TERMINATION OF CONTRACT.** County may terminate the Contract upon at least 30 days advance written notice to Contractor.

**7. NONAPPROPRIATION.** Nothing in the Contract will be construed to provide Contractor with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Contractor will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner,

the unexpended funds to Contractor. Contractor will have no claim of any sort to the unexpended funds.

**8. CONSTRUCTION OF CONTRACT.** The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party.

**9. COMPLIANCE WITH APPLICABLE LAWS.** Contractor promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

**10. ASSIGNMENT.** Contractor will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the County.

**11. COUNTY INSPECTION.** The books, records, documents and accounting procedures and practices of Contractor related to the Contract will be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

**12. DISPOSITION OF CONTRACT MATERIALS.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under the Contract (the "Materials") will be the exclusive property of the County and all such materials will be remitted and delivered, at Contractor's expense, to the County by Contractor upon the completion, termination or cancellation of the contract. Alternatively, if the County provides its written approval to Contractor, the Materials must be retained by Contractor for a minimum of six years after Contractor's receipt of the final payment from County and all other pending matters are closed. If, at any time during the retention period, the County, in writing, requests any or all of the Materials, then Contractor will promptly remit and deliver the materials, at Contractor's expense, to the County. Unless the County has requested the remittance and delivery by Contractor of the Materials, Contractor will not use, willingly allow or cause to have such Materials used for any purpose other than the performance of Contractor's obligations under the terms of the Contract without the prior written consent of the County.



**13. PUBLIC RECORDS LAW.** Contractor expressly understands and agrees that all documents submitted, filed, or deposited with the County by Contractor, unless designated as confidential by a specific statute of the State of Nevada, will be treated as public records pursuant to NRS chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

**14. INDEMNIFICATION OF COUNTY.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Contractor to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Contractor, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

**15. MODIFICATION OF CONTRACT.** The Contract and the attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**16. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this Contract.

**17. STANDARD OF CARE.** Contractor and its agent, Superintendent, will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Superintendent's profession currently practicing in the same locality under similar conditions.

**18. WAIVER OF LIEN.** Contractor understands and agrees that the services it will render to the County are not intended for the improvement of real property or to otherwise grant any rights to Contractor pursuant to NRS chapter 108.

**19. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, Superintendent, or to otherwise allow a third party to assert a cause of action against either Contractor or County.

**20. NOTICES.** All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day

following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Attn: Natalie Wood  
Post Office Box 218  
Minden, Nevada 89423  
Telephone: (775) 782-6268

**To Contractor:** Marcus G. Faust  
332 Constitution Avenue, NE  
Washington, D.C. 20002

**21. CONFLICT OF INTEREST.** By signing the Contract, Contractor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may immediately withdraw, without penalty or any payment, from the Contract.

**IN WITNESS WHEREOF**, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

**Marcus G. Faust, P.C.**

By: Marcus G. Faust 06/03/2019  
Marcus G. Faust, Esq. (Date)

**Douglas County**

By: William B. Penzel  
William B. Penzel (Date)

Douglas County State of Nevada

**CERTIFIED COPY**

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

3<sup>rd</sup> day of July, 2019

By: [Signature] Deputy