

Truckee River Flood Management Project



Governance Model Documents for FPCC Retreat - January 14, 2010 Agenda Item # 6

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(Rev. 1-10-11; annotated to show significant changes since Draft Summary dated 10-4-10)
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3. City of Reno Memo on Interlocal Agreement Model
(dated December 8, 2010)

(Rev. 1-10-11; annotated to discuss significant changes from Draft Summary dated 10-4-10)

**DRAFT—FOR DISCUSSION PURPOSES ONLY
THIS IS A WORK IN PROGRESS**

Summary of Key Provisions
for the
Joint Powers Authority Agreement
(Truckee River Flood Management Project)

Key:

- Text left unshaded = Original Draft of Summary points prepared October 4, 2010.
- Text shaded grey = Topics where substantive changes were made to the October 1, 2010 draft of the JPA agreement since the October 8, 2010 FPCC meeting.

Topic	Terms	Reference
PARTIES TO AGREEMENT; DEFINITIONS		
<i>Parties</i>	<ul style="list-style-type: none"> • “Members” are Washoe County, City of Reno, and City of Sparks. • “Authority” will join the agreement after it becomes organized in order to accept the responsibilities and set its indemnifications to the Members. 	§1.01
<i>Key Definitions</i>	Definitions to capitalized terms in Agreement are in §1.02. For this Outline: <ul style="list-style-type: none"> • PPA is Project Partnership Agreement with U.S. Army Corps of Engineers. • Flood Management Facilities includes all flood damage control facilities (levees, floodwalls etc), ecosystem restoration facilities and recreational facilities acquired or constructed by Authority. 	§1.02
ESTABLISHMENT OF JOINT POWERS AUTHORITY		
<i>Creation</i>	Truckee River Flood Management Authority created to manage and control the Truckee River Flood Management Project.	¶3.01.A
<i>Nature of Organization</i>	<ul style="list-style-type: none"> • Body corporate and public agency. • Separate entity created by interlocal agreement • Debts and obligations separate from Members • Not an agent of Members, and visa versa • Members may not be assessed to pay debts of Authority • Permanent entity until dissolved by Members or court • Boundaries are all of Washoe County • Will be a separate “local government” under NRS Chapter 354 and prepare its own budget, keep its own accounts, and do its own audits. 	¶3.01.C ¶3.01.A ¶3.01.C ¶3.01.C ¶3.01.C ¶3.01.D ¶3.01.E ¶3.08.A
<i>Governing Body</i>	<ul style="list-style-type: none"> • Board of Directors 	¶3.03.A

	<ul style="list-style-type: none"> • 6 Directors, 2 appointed by each Member • Directors must be elected officials of Members • Directors serve 2 year terms unless sooner removed by Member; may serve more than one term. • Alternate Directors may be appointed • Staggered terms • Meetings covered by Open Meeting Law • Rules of Procedure for meetings to be established. • Directors, officers and employees to be indemnified 	<p>¶3.03.B</p> <p>¶3.03.B</p> <p>¶3.03.B</p> <p>¶3.03.B</p> <p>¶3.03.B</p> <p>¶3.04.D</p> <p>¶3.04.E</p> <p>¶3.06.C</p>
<i>Quorum & Voting Requirements</i>	<ul style="list-style-type: none"> • Quorum is majority (4 of 6) of all Directors. NRS 241.0355 regarding voting requirements and counting of abstentions applies. 	<p>¶3.05.A</p> <p>¶3.05.B</p>
	<ul style="list-style-type: none"> ➤ At least 50% (4) of Directors must approve everything except as provided below. (Such as approve contracts, purchase and sell property, approve reports etc) 	<p>¶3.05.B.4</p>
	<ul style="list-style-type: none"> ➤ At least 75% (5) of Directors must approve: <ul style="list-style-type: none"> • Budgets, coverage ratios and reserves. • Capital Improvement Plans (which must first be presented to Member governing bodies for consultation before the Board takes action). • Living River Plan and amendments and Infrastructure Tax Plan. • Rates and Charges • Borrow money; Financing Agreements; Debt Instruments • By-Laws of Authority; regulations and policy statements. 	<p>¶3.05.B.3</p>
	<ul style="list-style-type: none"> ➤ At least 75% (5) of Directors and the governing body of <i>each Affected Member</i> must approve: <ul style="list-style-type: none"> • Proposed amendments or regulatory measures for inclusion in the affected Member's Development Codes. 	<p>¶3.05.B.2</p>
	<ul style="list-style-type: none"> ➤ At least 75% (5) of Directors and the governing bodies of <i>all</i> Members must approve: <ul style="list-style-type: none"> • Amendment, modification, termination of Agreement • Withdrawal or addition of a Member • Merger or combination with another entity • Dissolution of Authority 	<p>¶3.05.B.1</p>

<i>Board Officers, Committees,</i>	<ul style="list-style-type: none"> • Board Committees to be established in By-Laws • Board Officers will be Chair and Vice Chair (who must be Directors) as will be established in By-Laws 	¶3.06.B ¶3.06.A
<i>Withdrawal of a Member</i>	<ul style="list-style-type: none"> • Only by agreement approved by governing bodies of all Members. Agreement must not impair collection and pledge of revenues (until existing Debt Instruments are paid in full), any covenant in outstanding Debt Instrument or financing agreement, continuing construction of the project, or Authority’s obligation under the PPA. Agreement must provide for payment or reduction of existing Debt Instruments; preserve integrity of all facilities in project; and provide for continued operation and maintenance of facilities within the withdrawing Member’s jurisdiction. 	§3.09
<i>Dissolution of Authority</i>	<ul style="list-style-type: none"> • Must be approved by 75% of Board and the governing bodies of all Members. Agreement to dissolve must provide for repayment and performance of all obligations in Debt Instruments and agreements of Authority, including any agreements with federal agencies. • On dissolution, all of the conferred functions and powers delegated to the Authority by the Members (including rate making and regulatory powers), and all of the revenues and assets of the Authority shall be <ul style="list-style-type: none"> ○ offered to any Member who agrees to assume all responsibilities of the Authority and continue the project; ○ but if no Member so agrees, then <i>may</i> be sold or conveyed to another public agency, except that all functions and powers delegated to the Authority are terminated and any Member may delegate such functions and powers to the new entity in a separate agreement; or ○ The Authority will be liquidated as follows: <ul style="list-style-type: none"> • All functions conferred and powers delegated to Authority are terminated; • Flood Management Facilities will be conveyed to the Member in whose jurisdiction where located; • Centralized assets will be liquidated and after payment of debts and obligations, (a) to the extent federal funds were used to buy the liquidated assets, proceeds will be distributed in accordance with federal law, (b) the balance in Infrastructure Fund goes back to Washoe County, and (c) all remaining cash will be distributed to the Members in accordance with an agreement. 	¶3.05.B.1 ¶3.01.A ¶3.10.B
<i>Executive</i>	<ul style="list-style-type: none"> • Executive Director is chief executive officer of Authority 	¶3.07.A

<p><i>Director, Employees, & Counsel of Authority</i></p>	<p>who reports directly to and serves at pleasure of the Board. Duties to be established by resolution. Director will be administratively attached to Washoe County for payroll and benefits.</p> <ul style="list-style-type: none"> • Except as otherwise agreed with County, existing employees remain as employees of County and retain their salaries, seniority, benefits and rights under collective bargaining agreements. All existing and new employees will be employees of Washoe County, subject to all regulations and collective bargaining agreements of County, with same status as if Authority were a department and director were a department head of the County, except that employees are not agents of County. • Board may appoint counsel who reports to and serves at pleasure of Board. • Board may appoint a Chief Financial Officer. • Authority to reimburse County for all costs plus an administrative fee not to exceed 5%. 	<p>¶8.02.B ¶3.07.B ¶8.02.A ¶8.02.C ¶3.07.C ¶3.07.D</p>
<p>FUNCTIONS AND POWERS OF AUTHORITY</p>		
<p><i>Conferred Functions</i></p>	<p>Following functions conferred</p> <p><i>Regulatory</i></p> <p>i. To regulate the flow and control of floodwaters and the management of floodplains along the Truckee River and its Key Tributaries within Washoe County and propose plans and regulations as provided in Article 4 of this Agreement</p> <p><i>See “Regulatory Powers” discussion below for details under Article 4;</i></p> <p>ii. To perform emergency management functions as defined in NRS 414.035 and perform the functions of a local organization for emergency management under NRS 414.490 with respect to flooding along the Truckee River and its Key Tributaries as provided in Article 4 of this Agreement;</p> <p>iii. To regulate the actions of residents, businesses and others as a collective action in conjunction with the Members, to foster the goals set forth in §2.01;</p> <p><i>Revenue and Finance</i></p> <p>iv. To charge, impose, assess, levy, collect and enforce</p>	<p>¶3.02.A</p>

	<p>fees, rates and charges in accordance with Article 6 of this Agreement;</p> <p>v. To establish and amend from time to time the Infrastructure Tax Plan for the Truckee River Flood Management Project as provided in Article 6 of this Agreement;</p> <p>vi. To finance acquisition, improvement, construction, equipping, operating and maintaining the Truckee River Flood Management Project by issuing Debt Instruments or entering into financing agreements with other entities who may issue Debt Instruments, and irrevocably pledging the Gross Revenues to the repayment of such Debt Instruments;</p> <p>vii. To provide financial assistance to owners of public and private properties in areas that are likely to be flooded in order to make such property resistant to flood damage in accordance with NRS 244.3653;</p> <p>viii. To invest funds on hand in accordance with applicable law including NRS Chapter 355</p> <p><i>Project construction, operation and maintenance</i></p> <p>ix. To acquire, improve, construct, equip, operate and maintain the Truckee River Flood Management Project and all Flood Management Facilities;</p> <p>x. To be the “non-federal project sponsor” for the Truckee River Flood Management Project to solicit federal authorization and funding and enter into agreements with federal agencies for the acquisition, improvement, construction, equipping, operating and maintaining the Truckee River Flood Management Project; and</p> <p>xi. To operate and maintain the early warning system of tracking stations and sensors located throughout the Truckee Meadows and Eastern Sierra Nevada mountains and disseminate to Members and other affected entities information that is useful in predicting, among other things, the possibility of flooding.</p>	
<p><i>Delegated Powers</i></p>	<p>i. To assess, collect, account for and disburse Gross Revenues as provided in Article 6;</p> <p>ii. To cause the attachment of and enforce liens on property in connection with the fees rates and charges if</p>	

	<p>authorized by statute applicable within the Member's Jurisdiction where the property lies;</p> <p>iii. To commence and prosecute judicial or nonjudicial actions to enforce the collection of Gross Revenues and settle by compromise and settlement agreements;</p> <p>iv. To borrow money and incur indebtedness or other obligations and issue Debt Instruments;</p> <p>v. To enter into financing agreements with issuers of Debt Instruments or other parties which may include the irrevocable pledge of Gross Revenues;</p> <p>vi. To prepare flood control and floodplain management plans and propose regulatory measures as provided in Article 4 of this Agreement;</p> <p>vii. To enter into contracts affecting the affairs of the Authority, including but not limited to (a) contracts with entities and individuals to provide property, goods or services to the Authority, including professional services; (b) interlocal agreements and interstate compacts authorized under NRS Chapter 277; (c) contracts with the United States of America and any of its agencies or instrumentalities; (d) contracts with any municipality, district or public agency for the operation of a common or jointly owned project or the performance of duties related to control of floods or management of floodplains; and (e) contracts of indemnity;</p> <p>viii. To store floodwaters in surface detention or retention facilities within or without the jurisdictional boundaries of the Authority, and to save, conserve or reclaim floodwaters for present or future use of the Authority;</p> <p>ix. To cooperate with other entities or agencies in the regulation of the flow of waters through the Truckee River and its Key Tributaries;</p> <p>x. To sue and be sued in its own name with all of the immunities and protections afforded by law to the Members;</p> <p>xi. To, in its own name, take by grant, purchase, gift, devise or lease, or otherwise, and to hold, use, operate, repair, maintain, enjoy and to sell, lease, or dispose of</p>	
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	<p>real or personal property or any interest in real or personal property of every kind within or without the boundaries of the Authority;</p> <p>xii. To adopt and amend bylaws, resolutions and policy statements not in conflict with state and federal Constitutions and laws of Nevada for carrying on business, objects and affairs of the Authority;</p> <p>xiii. To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this Agreement;</p> <p>xiv. To cooperate with the United States, the State of Nevada, or any instrumentality, department, agency or political subdivision or municipal corporation either in the construction, maintenance and operation of the Truckee River Flood Management Project, including entering into agreements (a) to acquire and provide without cost to the operating entity the land, easements and rights of way necessary for the construction of those projects; (b) hold and save harmless the cooperating entity from any claim for damages arising from any claim for damages arising from the construction, maintenance and operation of those projects; (c) maintain and operate all works in accordance with regulations of the cooperating entity; and (d) ensure compatibility with protection levels;</p> <p>xv. To establish and implement a program to provide financial assistance to owners of public and private property in areas that are likely to be flooded in order to make such property resistant to flood damage subject to the authority, limitations and requirements as provided in NRS 244.3653 as amended or any subsequent law relating to providing assistance in providing nonstructural solutions or facilities for flood control or prevention;</p> <p>xvi. To open and maintain bank accounts;</p> <p>xvii. To purchase and maintain insurance;</p> <p>xviii. To use the Gross Revenues and assets to indemnify and defend the Board, individual Directors, officers and employees of the Authority with respect to actions taken within the scope of their employment or authority;</p>	
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	<p>xix. To employ persons and provide employee benefits to such employees, including retirement benefits, health benefits, vacation and leave benefits;</p> <p>xx. To enjoy all rights of and perform all of the duties of a “local government” under NRS Chapter 354 (Local Financial Administration); and</p> <p>xxi. To perform any function provided for elsewhere in this Agreement.</p>	
<p><i>Planning and constructing Project</i></p>	<p><i>The Authority:</i></p> <ul style="list-style-type: none"> • Shall develop Facilities Plans • Shall develop annual Capital Improvement Plans which must be approved as provided in ¶3.05.B ; • Shall enter into and administer PPA with Corps; • Shall complete all reports and agreements for federal funding; • May enter into TRAction project agreements and construct TRAction facilities; • Shall acquire all property needed for project unless otherwise agreed; • As funds become available, shall plan, schedule, and enter contracts for construction of projects in accordance with PPA and the Capital Improvements Plans. • May approve additional features or designs that exceed PPA requirements if requested by a Member <p>➤ Except as specified in the PPA, Flood Management Facilities may be designed, approved and constructed by the Authority.</p>	<p>¶5.01.A ¶5.01.C ¶5.02.A §4.09. ¶5.02.B §5.04 ¶5.05.D . ¶5.03.B ¶5.03.A ¶5.05.C</p>

<p><i>Owning, operating and maintaining the Flood Management Facilities</i></p>	<ul style="list-style-type: none"> • Before soliciting bids or entering into agreements for construction, Authority shall determine who will own, operate and maintain each Flood Management Facility and enter into appropriate agreements. • Unless otherwise agreed, Authority will own all Flood Management Facilities. • Authority has exclusive control and responsibility for operation and maintenance of Flood Management Facilities. • If a Member desires to operate and maintain a Facility in its jurisdiction, Authority will enter into agreement with Member to perform operations, maintenance and repair services with funding to be provided by Authority. • Authority must prepare and keep current maintenance and monitoring plans approved by USACE and FEMA and must periodically inspect • Authority exclusive agency to respond to Corps inquiries and instructions; Members performing maintenance on Facilities agree to comply with Corps instructions. • Members reserve emergency powers to deal with Flood Management Facilities during natural disaster, including excluding all others from facility regardless of ownership. • Authority shall provide for repair and replacement of all Flood Management Facilities, establishing reserves and purchasing insurance. 	<p>¶5.05.B</p> <p>¶5.06.A</p> <p>¶5.07.A</p> <p>¶5.07.E</p> <p>¶5.07.B</p> <p>¶5.07.C</p> <p>¶5.07.D</p> <p>¶5.07.E</p> <p>¶5.07.G</p> <p>§5.08</p>
<p><i>Emergency Powers</i></p>	<ul style="list-style-type: none"> • Authority to operate Early Warning System • Authority has <ul style="list-style-type: none"> ○ emergency planning powers to make recommendations to include in emergency management plans; ○ emergency operational powers except no police power and power is subordinate to Members; ○ duty to operate flood warning system; ○ power to enter into emergency management agreements. • Authority to share early warning system data. 	<p>¶5.09.A</p> <p>¶4.07.D</p> <p>§4.07</p> <p>¶5.09.C</p>
<p><i>Regulatory Powers</i></p>	<p><u>Coordinated use of police powers</u></p> <p>The Members confer certain functions and delegate on a <i>non-exclusive</i> basis the powers necessary and incidental...and agree to cooperatively plan and implement the Flood Management Facilities to regulate flood waters... to prevent loss of life and property, the disruption of essential public safety services, the disruption of commerce, the waste of water from floods, and to provide</p>	<p>¶4.01.A</p>

	<p>for improved quality of water, ecosystem restoration and enhanced recreational facilities, providing for and safeguarding the public health and implementing and protecting the Truckee River Flood Management Project..</p> <p>The exercise of regulatory actions taken on behalf of, or with respect to residents, businesses and any entities assessed fees by the Authority includes those taken by Members.</p> <p>Members agree that Authority must monitor proposed land use changes and development and construction in the project area to endeavor to ensure that they do not change drainage patterns, or increase the quantity, timing and duration of flows in a manner that adversely affects the Flood Management Facilities built or to be built.</p>	<p>¶4.01.A</p> <p>¶4.02.A.2</p>
Planning	<p><u>Flood Management Facilities Planning</u></p> <ul style="list-style-type: none"> • Authority prepare and amend Flood Management Plans and Capital Improvement Plans describing Flood Management Facilities to manage and control floodwaters passing through the Truckee River Flood Management Project to prevent damage from floods. 	<p>§4.05.A</p>
Development Code Input	<p><u>Regulatory Codes and Planning.</u></p> <ul style="list-style-type: none"> • Authority shall from time to time propose floodplain management and flood control plans and regulations for inclusion in Development Codes of Members (“Amendments”) to protect the Flood Management Facilities, to mitigate the adverse impact that new development may have on flooding and on the level of protection the facilities are designed to provide and to ensure compliance with the PPA. The Amendments will be drafted with the planning staffs of Members and other stakeholders and once the staffs agree on the wording will be promptly be presented to planning commissions/governing bodies for consideration in their sole legislative discretion. Members agree to act on the proposed Amendments within six months after proposed. If a Member does not approve the proposed Amendments, the Board will consider what was approved and may take appropriate action to protect Flood Management Facilities and prevent breach of the PPA. • Authority shall (in cooperation with Member planning staffs) submit floodplain management and flood control 	<p>¶4.02.B</p> <p>¶4.02.B.4</p> <p>§4.06</p>

	<p>plans to the Northern Nevada Water Planning Commission for inclusion in the Comprehensive Plan ; recommendations must be in unison with Member master plans;</p> <ul style="list-style-type: none"> • Members agree to request that a representative of the Authority be appointed to be a voting member of the Northern Nevada Water Planning Commission. • Authority shall propose to the Regional Planning Commission information required by NRS 278.0274 (2) and NRS 278.0274 (5) regarding floodplain management or Flood Management Facilities to be included in regional master plans. • If a Member appears before Regional Planning Commission with respect to (i) adoption or amendment of the Regional Plan, (ii) the guidelines and procedures for review of a project of regional significance, or (iii) amendments to the Member’s Master Plan. Member staff shall include any written comments submitted by Executive Director, but the Member staff is not obligated to agree with or recommend approval of the Executive Director’s comments. • Executive Director may appear before Regional Planning Commission or Governing Board without approval by the Board, but must obtain approval of the Board before seeking judicial review of any decision of the Regional Planning Commission or Governing Board 	<p>¶4.06.D</p> <p>§4.07</p> <p>¶4.07.B</p> <p>¶4.07.C</p>
<p><i>Review of development project applications</i></p>	<p><u>Review of Master Plan Amendments and Project Applications</u></p> <ul style="list-style-type: none"> • Proposed amendments to local Development Codes shall include that the following matters will be referred to the Authority as indicated. Fees, rates and charges will not be imposed by the Authority until these referral Amendments are adopted. <p>Over the past three months, many draft changes to the October 1 draft of the Agreement were circulated and considered. This summarizes the end result as it appears in the current draft of the Agreement as compared to the October 1 draft. It does not reflect the word by word changes done from one draft to another as we went along.</p> <ul style="list-style-type: none"> • To be referred to the Authority for <i>review and comment</i>: 	<p>¶4.02.B.2</p> <p>¶4.02.B.5</p>

	<p>(i) All Master Plan updates and amendments initiated by a Member</p> <p>(ii) Applications for initial approval of, or amendment to, special use permits and planned unit developments if (a) the development or project in question would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe); and (b) it is reasonably believed that the approval sought would potentially change the hydrologic response generated by the project site.</p> <p>(iii) Applications for initial approval of, or amendment to, tentative maps if the development or project in question would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe). Applications for tentative maps are not subject to review and comment and need not be sent to the Authority if the development or project in question is a final approved planned unit development.</p> <p>[Note: October 1 draft said that tentative “maps need not be sent to the Authority for review and comment if the development or project in question has already been submitted and reviewed as a planned development under subparagraph 4.02.B.2.a.ii next above and during such review, the Authority has not reserved the right to review and comment on tentative maps as they are developed.” This was changed on October 19 in response to a comment made at FPCC meeting].</p> <p>(iv) Applications for grading permits where the grading is a part of an overall development or project that (a) has not already been reviewed by Authority as a part of a planned unit development, a special use permit or tentative map; (b) would drain into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe); and (c) exceeds the area or other criteria established by regulation of the Authority.</p> <p>(v) Applications for those types of new development projects specified by Authority regulations approved pursuant to Paragraph 3.05.B of this Agreement or required by Development Codes to be submitted to the Authority</p>	<p>¶4.02.B.2. a</p>
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	<p>where (a) such new projects would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe; and (b) is reasonably believed that the new development would potentially change the hydrologic response generated by the project site.</p> <ul style="list-style-type: none"> • The following matters shall be referred to the Authority <i>for information only</i>. <ul style="list-style-type: none"> (i) Master Plan amendments initiated by land owners, (ii) zoning amendments; (iii) parcel maps and (vi) tentative maps, grading permits and special use permits not required to be submitted for review and comment to the Authority under subparagraph ¶4.02.B.2.a above. • <i>The following items are not subject to review and comment and shall not be referred to the Authority at all:</i> applications not referred to above, final maps, map extensions, annexations, records of survey, boundaryline adjustments, variances, minor deviations and building permits. • A separate permit or approval shall not be required from the Board. <p><u>With respect to matters submitted to Authority for review and comment:</u></p> <ul style="list-style-type: none"> • Authority staff shall review such items to ensure the activities will not have an adverse impact on the Flood Management Facilities or the functioning of the Truckee River Flood Management Project and advise Member staffs of their findings. Member staffs shall submit all written comments timely submitted but are not obligated to agree with or recommend approval of those comments and may make their own comments in their professional discretion. • Authority shall adopt standards and procedures for Authority staff to follow in making determinations and recommendations. • Authority must respond within the deadlines 	<p>¶4.02.B.2. b</p> <p>¶4.02.B.2 c</p> <p>¶4.02.C.1</p> <p>¶4.02.C.1</p> <p>¶4.02.B.3</p> <p>¶4.02.B.3</p>
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	<p>established by the Member, or the matter will be submitted to planning commission without comments;</p> <ul style="list-style-type: none"> • If Authority fails to file written comments on time and fails to appear at hearing, Authority waives rights of appeal and judicial review. 	¶4.02.B.3
	<p><u>Flood Impact Models and Analysis.</u></p> <ul style="list-style-type: none"> • Authority may acquire, operate and maintain one or more hydraulic, hydrological or other types of models or tools to determine conveyance capacities of the Flood Management Facilities and to assist in estimating the possible effects of the development of land or other events or circumstances on flooding, flood control plans, floodplain management plans, or the Flood Management Facilities. • An Interagency Hydrologic Model Team with equal representation from each Member shall be appointed to advise the Executive Director on the design, operation, maintenance, use and results of all hydrological models. The committee is not a public body subject to open meeting law. 	<p>¶4.02.C.3</p> <p>¶4.02.D</p>
	<p><u>Regulations of Authority:</u> Authority may enact regulations:</p> <ul style="list-style-type: none"> • setting standards and procedures for Authority staff to follow in making determinations and recommendations regarding future land use and development • regarding internal operating procedures and the use, operation, and maintenance of property of the Authority, • regulations must be approved by 75% of all members of the Board. 	<p>¶4.02.C.2</p> <p>§4.04</p> <p>¶3.05.B.3.e</p>

PROJECT FINANCING		
<i>Ratemaking Powers</i>	<ul style="list-style-type: none"> • Subject to provisions regarding withdrawal of a Member, and dissolution of Authority, Members irrevocably delegate to Authority the powers they have under SB 175 to impose and collect rates and fees to generate revenues to pay for acquisition, operation and maintenance of Flood Project. Rate resolution of Authority must provide for fee adjustment mechanisms and relief in extreme hardships. Rates and fees must be uniform between Member jurisdictions. Judicial confirmation required. • Each Member agrees not to repeal, amend or otherwise directly or indirectly impair outstanding Debt Instruments or other obligations of Authority... 	<p>§6.01</p> <p>¶6.01.A.2 ¶6.01.A.3 ¶6.01.A.4</p>
<i>Infrastructure Tax Plan powers</i>	<ul style="list-style-type: none"> • Reserving statutory powers and responsibilities to collect and administer the Infrastructure Tax (1/8 % sales tax), County irrevocably pledges and agrees to pay to Authority the Infrastructure Fund Flood Project Net Revenues (funds available after honoring all pledges and paying debt service and reserves on existing obligations of County secured by the Infrastructure Tax). • County delegates to Authority the power to change the Infrastructure Tax Plan with respect to flood project. • If County believes Authority is violating the law with respect to delegated powers, it may bring lawsuit after 60 days notice to Authority. 	<p>¶6.02.A ¶6.02.B ¶6.02.D</p> <p>¶6.02.C</p> <p>¶6.02.E</p>
<i>Other Revenue Powers</i>	<ul style="list-style-type: none"> • Authority has powers to accept loans and grants, cost sharing arrangements. 	¶6.03.A
<i>Expenditure of Project Revenues and Financing Flood Facilities</i>	<ul style="list-style-type: none"> • Authority may use and pledge Gross Revenues only for the Truckee River Flood Management Project and expenses of Authority. • Authority can borrow money and issue Debt Instruments (bonds etc) or enter into financing agreements with others who will issue Debt Instruments. 	<p>§6.04</p> <p>§6.05</p>
<i>Floodproofing Financial Assistance</i>	<ul style="list-style-type: none"> • Washoe County delegates power to provide financial assistance to owners of public and private properties in areas that are likely to be flooded in order to make such property resistant to flood damage in accordance with Section 3 of AB 54 (NRS 244.3653). 	<p>¶3.02.A.vii ¶3.02.B.xv</p>

<p><i>Required Debt Coverage and Reserves</i></p>	<ul style="list-style-type: none"> • Authority must maintain fees rates and charges so that Gross Revenues are sufficient to meet all operational expenses and cover at least 120% of required to be made on all Debt Instruments each year. • Authority must limit debt so that Gross Revenues over the ensuing five years would cover debt payments by 120% • Authority must maintain a Reserve for Replacement fund equal to 10% of the replacement cost of uninsured capital structures. Reserve may be built up over five years, and once established, if it falls below that level, it may be brought up to the correct level over a period of three years. A higher reserve requirement may be established by contract (financing agreement or Debt Instrument) or approval of the Board. • Authority must establish and maintain an operating reserve of 25% of each year’s operating budget to cover unexpected increases in operating costs and decreases in revenues. Reserve shall be built up over three years, and if it drops below the required amount may be built up over a three year period. A higher reserve requirement may be established by contract (financing agreement, Debt Instrument, PPA) or approved by the Board. • After initially established, if operating or replacement reserves fall below the required amount, Authority shall have three years to bring them up. 	<p>¶6.06.B.1</p> <p>¶6.06.B.2</p> <p>¶6.06.C.1</p> <p>¶6.06.C.1</p>
<p><i>Impairment of Debt Instruments or Gross Revenues</i></p>	<ul style="list-style-type: none"> • If collection of Gross Revenues or issuance or repayment of a Debt Instrument is invalidated or impaired by a court because of a provision in the Cooperative Agreement, Members shall amend the Agreement to correct. • If a court determines that action or inaction by a Member impairs or leads to the invalidation of the imposition of Gross Revenues or the issuance or repayment of a Debt Instrument, the Member agrees to take corrective action or assume the liability under any Debt Instrument to the extent the impairment is caused by the uncorrected action or inaction. 	<p>¶6.07.A</p> <p>¶6.07.B</p>

RIGHTS AND OBLIGATIONS OF MEMBERS		
<i>Insurance and Indemnifications</i>	<ul style="list-style-type: none"> • Authority must maintain insurance, and must name Members as additional insureds on general liability policies. 	§7.01
	<ul style="list-style-type: none"> • Members will indemnify, hold harmless and defend Authority from liability arising out of acts, errors and omissions of Members. 	§7.02
	<ul style="list-style-type: none"> • Authority will indemnify, hold harmless and defend Members from liability arising out of location, design, construction, condition, failure, and use of Facilities; errors and omissions of Authority; and “takings” liability. 	§7.02
<i>Washoe County</i>	<ul style="list-style-type: none"> • County shall convey property, contracts, funds, Books records and documents acquired for the flood project from Infrastructure Sales Tax within 90 days from written request by Authority, and may sell, lease, transfer property acquired with other funds. 	§8.01
	<ul style="list-style-type: none"> • Unless otherwise agreed, existing and new employees of Authority shall be employees of County subject to all ordinances, regulations, rules, policies and collective bargaining agreements and benefits. 	§8.02
	<ul style="list-style-type: none"> • Authority agrees to reimburse County for all costs plus up to 5% administrative fee. 	§8.02
<i>City of Reno</i>	<ul style="list-style-type: none"> • Reno may convey property needed for flood project. 	§9.01
	<ul style="list-style-type: none"> • TRAction and other contracts Reno has with County relating to the Truckee River Flood Management Project transferred over to Authority. 	§9.02
<i>City of Sparks</i>	<ul style="list-style-type: none"> • Sparks may convey property needed for flood project. 	§10.01
	<ul style="list-style-type: none"> • TRAction and other contracts Sparks has with County relating to the Truckee River Flood Management Project transferred over to Authority. 	§10.02
	<ul style="list-style-type: none"> • <u>Rescission of Sparks Flood Protection Rates.</u> Sparks agrees to rescind its Flood Protection Rates upon if the Authority adequately provides for the North Truckee Drain project in its rates imposed under §6.01 of the Agreement. 	¶10.05.D
	<ul style="list-style-type: none"> • <u>Completion of North Truckee Drain (NTD) Project.</u> Sparks agrees to complete the design of the NTD Project and acquire the land necessary to build it, then will turn over the project assets to the Authority. Authority agrees to construct, operate, and maintain the NTD Project when design and land acquisition is done and all assets are turned over to Authority. NTD Project may be constructed in phases consistent with availability of funding. [Note: Deleted was a clause that said that the Authority would give the NTD Project priority over other construction projects.] 	§10.05

	Sparks has option to take the NTD Project over if the Authority fails to (i) implement its fees rates and charges within 180 days from certain specified events, or (ii) enter into a binding construction contract to build the NTD Project within 365 days from certain specified events. If Sparks takes over the project, Authority will turn over all project assets to Sparks and will make funds capital construction costs budgeted for the Project available.	
GENERAL TERMS		
<i>Term and Termination of Agreement</i>	<ul style="list-style-type: none"> • Agreement Commences when executed by all parties (Authority executes when it has been duly organized) and approved by Attorney General, and is perpetual until terminated. 	§12.01
	<ul style="list-style-type: none"> • Agreement may be partially or completely terminated by agreement of the parties. Authority must be dissolved on complete termination of Agreement. 	§12.02
<i>Other Terms and Provisions</i>	Article 12 contains provisions regarding; default and remedies [§12.03],waivers [§12.04], representations and warranties of the parties [§12.05], general covenants of the parties [§12.06], assignment and delegation [§12.07], binding effect, no third party beneficiaries [§12.08], standards for approval [§12.09], notices [§12.10], further acts and assurances [§12.11], attorneys fees and costs [§12.12], timing provisions [§12.13], applicable law [§12.14], non-liability of officers and employees of parties [§12.15], severability of invalid provisions [§12.16], construction of Agreement [§12.17], modifications and amendments [§12.18], authority to execute [§12.19] and entire agreement with counterpart signatures [§12.20].	Art. 12
<i>Termination of 2005 Cooperative Agreement</i>	Each party to this agreement releases and discharges the other parties to this Agreement under and consents to terminate the 2005 Cooperative Agreement (establishing the FPCC) with the intent that it be replaced by this Agreement [Actual termination of 2005 Agreement must be accomplished by separate instrument in writing because it was signed by UNR in addition to signers of this Agreement].	§12.21

INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

dated as of _____

among

Washoe County, Nevada

and

The City of Reno, Nevada

and

The City of Sparks, Nevada

and

The Truckee River Flood Management Authority



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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

dated as of _____

Article 1 PARTIES, DEFINITIONS

§1.01 *Parties* THIS AGREEMENT is entered into among

County Washoe County, a political subdivision of the state of Nevada
1001 E. Ninth Street; P.O. Box 11130
Reno, Nevada 89520-0027

Reno City of Reno, a municipal corporation
One East First Street
Reno, Nevada 89501

Sparks City of Sparks, a municipal corporation
431 East Prater Way
Sparks, Nevada 89431

Authority Truckee River Flood Management Authority
a joint powers authority
9390 Gateway Drive, Suite 230
Reno, Nevada 89521

§1.02 *Definitions* The following words have the following meanings as used
in this Agreement.

2005 Cooperative Agreement means the “Truckee River Flood Management Project
Cooperative Agreement” entered into between Washoe County, the City of Reno, the
City of Sparks, and the University of Nevada, Reno, in April of 2005, as amended.

Affected Member means a Member who will be affected by (i) the proposed
construction of a Flood Management Facility within the Member’s jurisdiction, (ii) a
proposed amendment to its Development Code, or a proposed change to the Regional
Master Plan, Regional Water Plan, Emergency Plan or action indicated in Article 4
hereof, or (iii) an application for a project to be developed in whole or in part within the
Member’s jurisdiction.

Authority means the Truckee River Flood Management Authority created under this
Agreement.

AB 54 means Chapter 325, Statutes of Nevada, 2009, 1428, now codified as NRS 244.3653.

Board means the Board of Directors of the Authority.

Capital Improvement Plan(s) means the plans prepared and approved as provided in §5.01.

Debt Instrument means any written instrument promising to repay a debt or undertaking to pay an obligation, including, but not limited to any or combination of: a note, warrant, bond, temporary bond, interim debenture, an instrument, a medium term obligation, a special obligation, a certificate of participation, an installment purchase agreement, whether or not any of the foregoing are for general or special obligations, and a contract regarding variable rates of or the exchange of rates interest . The term includes any instrument pledging revenues or granting security interests, mortgages or other encumbrances against assets as security for any of the foregoing.

Development Code means, all plans (including the master plan adopted pursuant to NRS 278.220), ordinances, resolutions and policies regarding the use and development of land, zoning, planned developments, subdivisions, parcel maps, and the like.

Director means a person who serves on the Board of Directors as provided in ¶3.03.A and ¶3.03.B.

Executive Director means the chief executive officer and chief administrative officer of the Authority appointed under ¶3.07.B

Facilities Plan(s) means one or more plans depicting the location of and describing one or more proposed or existing Flood Management Facilities. Facilities Plans may be drawn at different levels of detail and adapted for different uses, such as plans to include in land use master plans, plans submitted to the United States for funding authorization, and detailed construction plans for construction bidding.

Fee Revenues means the revenues generated from the fees, rates and charges imposed under §6.01 and any interest or investment income thereon.

Flood Management Project means a Flood Management Project as defined in Sections 4 and 16 of SB 175.

Flood Management Facilities. means all facilities acquired or constructed by or under an agreement with the Authority for the purpose of managing and controlling flood waters , including, but not limited to, all flood structures, levees, floodwalls, ecosystem restoration projects, floodplain improvements (including terracing, bank stabilization and recreational facilities), and the land or other interests in land (such as flowage easements) acquired for the purpose of controlling flood waters or reducing damages caused by floodwaters.

Gross Revenues means revenues generated to pay for the Flood Management Project, including, but not limited to (i) the Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues pledged under ¶6.02 of this Agreement, (ii) the fees, rates and charges imposed and collected under §6.01 of this Agreement, and (iii) grants, loans or revenues from other sources received by the Authority.

Infrastructure Tax means the 1/8 per cent infrastructure sales tax authorized by NRS Chapter 377B (Tax for Infrastructure) and imposed by Washoe County in December of 1998 under Ordinance 1048, now codified at WCC 20.914, and all amendments and changes to applicable statutes and ordinances.

Infrastructure Tax Plan means the Infrastructure Tax Plan adopted by the Board of County Commissioners under NRS 377B.100 (6) as amended from time to time. The plan includes a description of each proposed project, the method of financing and the costs related to each project. The initial Infrastructure Tax Plan was adopted by the Board in 1998 for the financing of a regional emergency dispatch facility, a public safety training facility and the U.S. Army Corps of Engineers Flood Control Project.

Infrastructure Tax Plan for Truckee River Flood Management Project means the portion of the Infrastructure Tax Plan relating to the Truckee River Flood Management Project. See “Second Amendment (2009) to Infrastructure Tax Plan Adopted November 17, 1998 for Public Safety and Flood Control Projects relating to the Truckee River Flood Management Project, December 8, 2009.”

Key Tributary means the Boynton Slough, the North Truckee Drain, and Steamboat Creek.

Living River Plan is a plan, as amended from time to time, for the whole Truckee River Flood Management Project. It includes statements of objectives, project element descriptions, and maps depicting and describing the entire project (including flood damage reduction facilities, ecosystem restoration, and recreational projects) from West of Reno to Pyramid Lake. The plan was formerly called the Community Coalition Plan, and is intended to serve as the “Locally Preferred Plan” for submission to the United States Congress as a part of project authorization. It was originally adopted in March of 2006 by the Flood Project Coordinating Committee following years of cooperative planning by a community coalition.

Member means Member of the Authority as identified in ¶3.01.B

Member’s Jurisdiction means for the County, the unincorporated boundaries of Washoe County, and for Reno and Sparks, their respective incorporated boundaries except that with respect to a proposed regulation of the Authority under Article 4 of this Agreement, the Member’s Jurisdiction includes any spheres of influence, which are areas (as defined in NRS 268.623) into which a city plans to expand as designated in a comprehensive regional plan adopted pursuant to NRS 278.026 to 278.029.

Project Partnership Agreement (PPA) means an agreement entered into between the Authority and the United States Army Corps of Engineers involving the development, financing, construction, operation and maintenance of the Flood Project in accordance with federal law and USACE regulations.

SB 175 means Chapter 477, Statutes of Nevada 2009, page 2735, as amended from time to time.

TRAction Project (Truckee River Action Projects) means a project authorized by the Authority to be commenced before congressional authorization of the Flood Project and the execution of a PPA with the USACE, or a project which is being built without cost sharing by USACE.

Truckee River Flood Management Project means the project established under and contemplated by this Agreement to control floods and manage floodplains, including all regulatory plans and measures, all financing and other agreements, and the construction, operation and maintenance of all Flood Management Facilities.

Truckee River Flood Management Infrastructure Fund means the fund described in NRS 377B.150 for the benefit of the Truckee River Flood Management Project together with monies deposited and held therein and interest or investment income earned or accrued on such monies held in the account.

Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues means the balance remaining in the Truckee River Flood Management Infrastructure Fund after paying or reserving for the following obligations (a) Washoe County, Nevada, Sales Tax Revenue Bonds Series 1998, and (b) Washoe County, Nevada, General obligation (Limited Tax) Flood Control Bonds Series 2006, or the refundings thereof.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, 42 U.S.C. 4601 et seq, and the implementing regulations of the U.S. Department of Transportation, 49 CFR Part 24, together with any USACE Regulation or state statute (NRS Chapter 342) that the Authority must observe when acquiring property and relocating displaced persons.

USACE means the United States Army Corps of Engineers.

Western Regional Water Commission Act means the Western Regional Water Commission Act, Chapter 531, Statutes of Nevada 2007, as amended.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 2 RECITALS AND PURPOSE OF AGREEMENT

§2.01 *Recitals.*

WHEREAS:

A. Significant flooding of the Truckee River and its Key Tributaries occurs at least once every ten years and inflicts catastrophic (i) loss of life and property; (ii) disruption of commerce, transportation, communication and essential services which not only impair the ability to provide public safety and health services but also have adverse economic impacts; (iii) waste of and reduction in the quality of water; and (iv) deterioration of public health and safety;

B. The Members share a common and compelling interest in jointly regulating and controlling waters of the Truckee River and its Key Tributaries that flow through their territories ~~so to prevent~~, reduce or mitigate such damages or losses, and since 1986 have been working with community coalition citizen groups, working groups, local agencies, and the United States Army Corps of Engineers to develop the “Living River Plan” that contemplates a series of coordinated Flood Management Facilities along the Truckee River which would ~~reduce prevent~~ or mitigate flood damage, would provide ecosystem restoration and could be enhanced with recreational facilities;

C. In 2005, the Members entered into the 2005 Cooperative Agreement which, among other things, established a Flood Project Coordinating Committee to design and determine ways to finance a project including flood control facilities, ecosystem restoration and recreation projects for the benefit of the metropolitan area. Cooperative efforts were accomplished through a Flood Project Coordinating Committee which has approved project plans and methods of financing them;

D. Effective ~~flood prevention and~~ flood damage reduction requires coordinated and cooperative efforts in (i) conducting scientific hydrological and hydraulic studies to determine and predict the sources, characteristics, behavior and forces of floodwaters in the Truckee River area, and the effects that land use, land development, and governmental practices may have on floods; (ii) planning for the control of floods and management of floodplains and integrating uniform plans in the local Development Codes, and regional water resource and land use master plans required by statute; (iii) constructing, operating and maintaining flood control and management facilities to prevent or minimize flood damage, and (iv) entering into agreements with other government or private agencies to regulate or control floodwaters, promote governmental efficiency and the minimize damage caused by flooding or conditions that could lead to flooding;

E. In 2009, the Nevada legislature enacted Senate Bill 175 (2009 Statutes of Nevada, Chapter 477, page 2735):

1. Declaring that Flood Management Projects provide a benefit to residents and owners of property by (i) preventing the loss of life and property, (ii) preventing the disruption of essential services for the safety of the public and the disruption of commerce, transportation, communication and essential services which have adverse economic impacts; (iii) preventing the waste of water resulting from floods; (iv) providing for the conservation, development, and use and disposal of water and improved quality of water; (v) providing for ecosystem restoration and enhanced recreational facilities; and (vi) providing for the safeguarding of the public health; and

2. Establishing the power for cities and counties to levy and collect fees, rates and charges to acquire, improve, equip, operate and maintain a flood management project, and permitting the cities and counties to delegate that power to a flood management authority created by an interlocal cooperative agreement under NRS Chapter 277;

F. The Members are authorized under various provisions of NRS Chapter 277 to enter into an interlocal cooperative agreement that would, among other things, create a flood management authority to carry out the coordinated and cooperative efforts of the Members in implementing a successful flood management program as described in Recital D above;

G. In adopting this Agreement, the governing bodies of the Members have determined that the Truckee River Flood Management Project as contemplated herein would (i) prevent the loss of life and property, (ii) prevent the disruption of commerce, transportation, communication and essential services which have adverse economic impacts; (iii) prevent the waste of water resulting from floods; (iv) provide for the conservation, development, use and disposal of water and improved quality of water; (v) provide for ecosystem restoration and enhanced recreational facilities; and (vi) provide for the safeguarding of the public health;

H. The Members believe that enhancing Flood Management Facilities with recreational features is an efficient method of using public facilities and provides a significant public benefit, and should be achieved as a priority basis;

I. In 1998, Washoe County established the Infrastructure Tax to, among other things, assist in the financing of a flood control project, and desires to devote the Truckee River Flood Management Infrastructure Fund Net Revenues to the financing of the Infrastructure Tax Plan for the Truckee River Flood Management Project;

J. The U.S. Army Corps of Engineers (USACE) requires a local sponsor for a water resource project to be a legally constituted public body with full authority and capability to perform the terms of its agreements with the Corps and to pay damages, if necessary, in the event of failure to perform; and

NOW, THEREFORE, pursuant to the provisions of this Agreement, for the purposes stated above, and in consideration of the mutual promises contained herein, it is hereby agreed by and between the parties as follows.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

**Article 3 TRUCKEE RIVER FLOOD MANAGEMENT
AUTHORITY**

§3.01 *Formation and Membership.*

¶3.01.A Creation. The parties hereby jointly create the Truckee River Flood Management Authority (the “**Authority**”) as an independent and separate entity to manage, operate and control the Truckee River Flood Management Project and carry out the purposes of this Agreement.

¶3.01.B Members.

Members of the Authority are Washoe County, City of Reno, and the City of Sparks. Members may be added to the Authority by amendment to this Agreement, and Members may withdraw only in accordance with §3.09 below.

¶3.01.C Independent Status of Authority.

The Authority shall be a body corporate and politic and a public agency independent and separate from its Members. The debts, obligations and undertakings of the Authority are not the debts, obligations and undertakings of and are not binding on its Members, even if the Members approved or ratified them. Unless otherwise agreed in writing approved by the Member, the Authority is not an agent of any Member, and no Member is an agent of the Authority. No Member may be assessed to pay or cover any costs, expenses, losses or obligations of the Authority.

¶3.01.D Duration of Existence. The Authority shall have a perpetual existence unless and until dissolved.

¶3.01.E Boundaries. The jurisdictional boundaries of the Authority shall be the boundaries of Washoe County, including the Members Jurisdiction for the incorporated City of Reno, and the incorporated City of Sparks as those boundaries exist today and as amended from time to time ~~by annexation or otherwise~~ by the Members.

¶3.01.F Principal Office. The principal office of the Authority shall be within Washoe County as determined by the Board.

§3.02 ***Conferred Functions/ Delegated Powers and Prohibited Functions and Powers***

¶3.02.A Conferred Functions: Subject to the provisions of ¶3.02.C, the conferred functions of the Authority are as follows:

Regulatory

- i. To regulate the flow and control of floodwaters and the management of floodplains along the Truckee River and its Key Tributaries within Washoe County and propose plans and regulations as provided in Article 4 of this Agreement;
- ii. To perform emergency management functions as defined in NRS 414.035 and perform the functions of a local organization for emergency management under NRS 414.490 with respect to flooding along the Truckee River and its Key Tributaries as provided in Article 4 of this Agreement;
- iii. To regulate the actions of residents, businesses and others as a collective action in conjunction with the Members, to foster the goals set forth in §2.01;

Revenue and Finance

- iv. To charge, impose, assess, levy, collect and enforce fees, rates and charges in accordance with Article 6 of this Agreement;
- v. To establish and amend from time to time the Infrastructure Tax Plan for the Truckee River Flood Management Project as provided in Article 6 of this Agreement;
- vi. To finance acquisition, improvement, construction, equipping, operating and maintaining the Truckee River Flood Management Project by issuing Debt Instruments or entering into financing agreements with other entities who may issue Debt Instruments, and irrevocably pledging the Gross Revenues to the repayment of such Debt Instruments;
- vii. To provide financial assistance to owners of public and private properties in areas that are likely to be flooded in order to make such property resistant to flood damage in accordance with NRS 244.3653;
- viii. To invest funds on hand in accordance with applicable law including NRS Chapter 355

Project construction, operation and maintenance

- ix. To acquire, improve, construct, equip, operate and maintain the Truckee River Flood Management Project and all Flood Management Facilities;
- x. To be the “non-federal project sponsor” for the Truckee River Flood Management Project to solicit federal authorization and funding and

enter into agreements with federal agencies for the acquisition, improvement, construction, equipping, operating and maintaining the Truckee River Flood Management Project; and

- xi. To operate and maintain the early warning system of tracking stations and sensors located throughout the Truckee Meadows and Eastern Sierra Nevada mountains and disseminate to Members and other affected entities information that is useful in predicting, among other things, the possibility of flooding.

¶3.02.B Delegated Powers

1. The Authority is hereby delegated and shall have all powers necessary and incidental to the accomplishment of the conferred functions listed in ¶3.02.A, including, but not limited to the power:

- i. To assess, collect, account for and disburse Gross Revenues as provided in Article 6;
- ii. To cause the attachment of and enforce liens on property in connection with the fees rates and charges if authorized by statute applicable within the Member's Jurisdiction where the property lies;
- iii. To commence and prosecute judicial or nonjudicial actions to enforce the collection of Gross Revenues and settle by compromise and settlement agreements;
- iv. To borrow money and incur indebtedness or other obligations and issue Debt Instruments;
- v. To enter into financing agreements with issuers of Debt Instruments or other parties which may include the irrevocable pledge of Gross Revenues;
- vi. To prepare flood control and floodplain management plans and propose regulatory measures as provided in Article 4 of this Agreement;
- vii. To enter into contracts affecting the affairs of the Authority, including but not limited to (a) contracts with entities and individuals to provide property, goods or services to the Authority, including professional services; (b) interlocal agreements and interstate compacts authorized under NRS Chapter 277; (c) contracts with the United States of America and any of its agencies or instrumentalities; (d) contracts with any municipality, district or public agency for the operation of a common or jointly owned project or the performance of duties related to control of floods or management of floodplains; and (e) contracts of indemnity;
- viii. To store floodwaters in surface detention or retention facilities within or without the jurisdictional boundaries of the Authority, and to save, conserve or reclaim floodwaters for present or future use of the Authority;
- ix. To cooperate with other entities or agencies in the regulation of the flow of waters through the Truckee River and its Key Tributaries;

- x. To sue and be sued in its own name with all of the immunities and protections afforded by law to the Members;
- xi. To, in its own name, take by grant, purchase, gift, devise or lease, or otherwise, and to hold, use, operate, repair, maintain, enjoy and to sell, lease, or dispose of real or personal property or any interest in real or personal property of every kind within or without the boundaries of the Authority;
- xii. To adopt and amend bylaws, resolutions and policy statements not in conflict with state and federal Constitutions and laws of Nevada for carrying on business, objects and affairs of the Authority;
- xiii. To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this Agreement;
- xiv. To cooperate with the United States, the State of Nevada, or any instrumentality, department, agency or political subdivision or municipal corporation either in the construction, maintenance and operation of the Truckee River Flood Management Project, including entering into agreements (a) to acquire and provide without cost to the operating entity the land, easements and rights of way necessary for the construction of those projects; (b) hold and save harmless the cooperating entity from any claim for damages arising from any claim for damages arising from the construction, maintenance and operation of those projects; (c) maintain and operate all works in accordance with regulations of the cooperating entity; and (d) ensure compatibility with protection levels;
- xv. To establish and implement a program to provide financial assistance to owners of public and private property in areas that are likely to be flooded in order to make such property resistant to flood damage subject to the authority, limitations and requirements as provided in NRS 244.3653 as amended or any subsequent law relating to providing assistance in providing nonstructural solutions or facilities for flood control or prevention;
- xvi. To open and maintain bank accounts;
- xvii. To purchase and maintain insurance;
- xviii. To use the Gross Revenues and assets to indemnify and defend the Board, individual Directors, officers and employees of the Authority with respect to actions taken within the scope of their employment or authority;
- xix. To employ persons and provide employee benefits to such employees, including retirement benefits, health benefits, vacation and leave benefits;
- xx. To enjoy all rights of and perform all of the duties of a “local government” under NRS Chapter 354 (Local Financial Administration); and
- xxi. To perform any function provided for elsewhere in this Agreement.

2. County expressly acknowledges and agrees that action by the Board, as described in this Agreement, is all that is required for the Authority to exercise the powers and authorities it has been delegated and that approval by the Board of County Commissioners is not required for the completion of any exercise of such power or authority.

¶3.02.C Prohibited Functions and Powers.

1. Nothing in this Agreement shall be construed as authorizing the Authority to perform any function or to exercise any power within a Member's Jurisdiction that is not performable or exercisable by the Member.

2. The Authority does not have the power of eminent domain. The power of eminent domain must be exercised by the Affected Member in whose jurisdiction the property to be obtained is located. Before requesting that an Affected Member consider using eminent domain, the Authority must first comply with all applicable state and federal laws regarding the voluntary acquisition of land, including, but not limited to, all of the requirements and procedures set out in the URA regarding obtaining an appraisal, having the appraisal reviewed, making a written offer of just compensation, making all reasonable efforts to discuss the offer with the property owner and affording the owner reasonable opportunity to present material which the owner believes is relevant to determining the value of the property. If those reasonable efforts fail, the Board must make a written request to the governing body of the Affected Member to consider the use of eminent domain, which written request must: (i) give a history of all efforts to acquire the property by negotiations, (ii) explain why it is necessary to acquire the property in sufficient detail for the governing body to adopt a resolution of necessity as required by Nevada law, (iii) describe the estate to be acquired (fee title, easement etc) and justify why it is the minimum estate required, and (iv) propose a funding agreement whereunder the Authority will post a letter of credit for the just compensation to be offered as well as all costs and expenses. The governing body of the Affected Member shall promptly consider the request in its sole and absolute legislative discretion. The Authority shall not have the authority to bring any action to compel or prohibit the use of eminent domain by an Affected Member.

¶3.02.D Policies. In executing the conferred functions and exercising the delegated powers, the Board shall adopt resolutions establishing polices, practices and procedures with respect to the acquisition , management and disposal of property, the purchasing of services and supplies, the approval of contracts by the board, the payment of relocation expenses as required by state and federal law, employee and labor relations, and as otherwise provided herein.

§3.03 *Governing Body of Authority.*

¶3.03.A Board of Directors. The policies, business and affairs of the Authority shall be conducted and governed by a Board of Directors consisting of two Directors for

each Member, and each Director shall have one vote. The Directors shall serve without compensation.

¶3.03.B Appointment and Term of Directors.

1. The governing bodies of each Member shall appoint two Directors both of whom must be elected members of the governing body. If a Director resigns or ceases to be an elected official of the Member's governing body, a vacancy in the Board is automatically created, and the governing body shall replace him or her with another elected official for the remainder of the term.

2. In order to establish staggered terms, each Member shall appoint one Director for an initial term of one year, and one Director for an initial term of two years. After the initial term, Directors shall serve for terms as provided in subparagraph 3.

3. Unless a vacancy is created under ¶3.03.B 1, or unless a Director resigns or is sooner removed at the pleasure of the governing body of the appointing Member, Directors serve for a term of two years or until a replacement is appointed and qualified. Directors may serve for more than one term at the pleasure of the governing body of the appointing Member.

4. The governing body of each Member may appoint one or more alternates for each appointed Director. The alternate for a Director may sit in and vote for the Director when the Director is absent or abstains from voting on an issue.

5. Vacancies shall be promptly filled by the governing bodies of Members.

§3.04 *Meetings of Board.*

¶3.04.A Regular Meetings. The Board shall establish a regular meeting schedule to meet at a time and place to be selected by the Board, and may postpone or cancel meetings as it deems appropriate.

¶3.04.B Special Meetings. The chair may call special meetings at any time.

¶3.04.C Location. The Board may meet any place within or without the State of Nevada.

¶3.04.D Open Meeting Law. The Board is a public body and all of its meetings must be open and public and conducted in compliance with the Nevada Open Meeting Law (NRS Chapter 241).

¶3.04.E Rules of Procedure. The Board shall establish by-laws and rules of procedure governing the conduct of meetings. If by-laws and rules of procedure are not enacted, Roberts Rules of Order shall govern the conduct of meetings.

§3.05 Quorum and Voting Requirements for Board Actions.

¶3.05.A Quorum. A majority of all Directors must be present in order to conduct business at a meeting. A vacancy in the Board does not reduce the number of Directors required for a quorum or with respect to approval of actions.

¶3.05.B Approval of Actions. The following actions must be approved as follows.

Proposed action		must be approved by See Note [1] below:
1a	Any amendment, modification, partial or complete termination of this Agreement.	<ul style="list-style-type: none"> • Affirmative vote of at least 75% of all of the Directors and • the governing bodies of all Members.
1b	The withdrawal or addition of any Member. [See §3.09]	
1c	Merger or combination of the Authority with another entity	
1d	Dissolution of the Authority	
2a	Proposed amendments or regulatory measures for inclusion in Local Development Codes under §4.02.B of this Agreement.	<ul style="list-style-type: none"> • Affirmative vote of at least 75% of all of the Directors and • the governing body of each Affected Member
3a	Charge and impose, revise, adjust, waive or compromise of fees, rates and charges under §6.01	Affirmative vote of at least 75% of all of the Directors
3b	Enter into or amend financing agreements or issue Debt Instruments. See Note [2]	
3c	The adoption and all amendments to the Living River Plan; and the adoption or amendment of the Infrastructure Tax Plan under ¶6.02.C.	
3d	The adoption and amendment of all capital improvement plans, but before the Board may take final action on any capital improvement plan, it must first make a presentation to the governing bodies of all Members.	
3e	Adopt and amend by-laws of the Authority; and regulations, or resolutions or policy statements.	
3f	Approve budgets and amendments; approve and amend establishment of accounts, funds, coverage ratios and reserves per §6.06.	

4	<p>All other actions, including, but not limited to approval and amendment of:</p> <ul style="list-style-type: none"> • Facilities Plans which are consistent with the Living River Plan; • Other regulatory matters under Article 4; • Obtaining federal funding and entering into federal agreements. 	<p>Affirmative vote of at least 50% of all of the Directors.</p>
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Note [1] The provisions of NRS 241.0355 regarding abstentions shall apply to the Board.

Note [2] However, the Board may provide in a Debt Instrument (as authorized in NRS 350.165) or a financing agreement that certain amendments and matters may be approved by the Executive Director.

[¶3.05.C Respecting the legislative discretion and responsibilities of the governing bodies of the Members and other organizations, it is understood that a vote by a Director on a matter before the Board neither creates or implies any obligation for the Director or any Member or any other person to advocate or vote in a similar fashion when the matter or a similar matter is considered by other public bodies.](#)

§3.06 *Officers and Committees of the Board.*

¶3.06.A Officers of the Board The Board shall elect from its membership a Chair and a Vice Chair, who shall be elected and qualified and serve for terms and perform duties as provided in the By-Laws of the Authority.

¶3.06.B Committees In addition to committees established in this Agreement, the Board shall appoint by resolution or in the By-Laws, other standing or ad hoc committees.

¶3.06.C Board Liability The Authority shall use the Assets and Gross Revenues to defend and indemnify Directors, officers and employees of the Authority for actions taken within the scope of employment or authority.

§3.07 *Executive Director, Employees and Counsel of Authority*

¶3.07.A Executive Director. The Executive Director shall be the chief executive officer and chief administrative officer of the Authority [reporting directly to the Board.](#) The Board shall establish by resolution the powers and responsibilities of the Executive Director. The Executive Director shall be appointed by and shall serve at the pleasure of the Board.

¶3.07.B Employees

1. All existing employees of the Flood Project Department of Washoe County shall remain as employees of Washoe County but under the control of the Authority as provided in Article 8 of this Agreement.

2. The Authority is a public employer under NRS 286.070 and all officers and employees shall be entitled to the benefits of NRS Chapter 286.

¶3.07.C Counsel

The Board may appoint legal counsel. While legal counsel provides advice and assistance to the Executive Director and employees of the Authority, legal counsel is responsible directly to and serves at the pleasure of the Board.

¶3.07.D Chief Financial Officer/Treasurer.

The Executive Director ~~may shall~~ select and appoint a Chief Financial Officer who shall, in addition to other duties established by the Board, act as treasurer of the Authority.

§3.08 *Budget; Books and Accounting; Audit*

¶3.08.A Authority a “Local Government” As it will receive revenues from mandatory fees, rates and charges and assessments, the Authority is a “local government” under NRS 354.474 and shall comply with NRS Chapter 354.

¶3.08.B Fiscal Year. The fiscal year for the Authority shall be from July 1 to June 30 of each year.

¶3.08.C Budget.

1. The Authority shall prepare, present, adopt and administer its own separate and independent budget under the Local Government Budget and Finance Act (NRS 354.470 through 354.626).

2. The Authority shall not, during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditures of money, in excess of the amounts appropriated for that function, other than bond repayments, short term financing repayments, construction contracts for which funds are to be provided by a bond issue or other borrowing and any other long-term contracts as to which such expenditures are expressly authorized by law.

¶3.08.D Books and Accounts.

1. Complete books and accounts of the Authority shall be kept in accordance with generally accepted accounting principles and shall comply with all applicable statutes and regulations, including NRS Chapter 354.

2. The Authority may enter into a service contract with any public agency to perform accounting and budgeting functions ~~Washoe County to include its books and records in the County's financial accounting system~~ provided that (i) accounts of the Authority are clearly identified and segregated, and are subject to access by Authority staff and audit as provided below; and (ii) the Board shall have exclusive control over all assets, revenues, books, and records and may adopt its own policies and procedures relating to budgeting and disbursements, and that any conflicting policy or procedure of the public agency ~~County's~~ is not binding on the Authority.

3. Members and their auditors shall have access to the books and records of the Authority at any reasonable time during business hours and may inspect and copy them without charge.

¶3.08.E Audit.

1. The Authority shall provide for an annual audit of all funds and accounts as provided in NRS 354.624.

2. A copy of each audit report shall be provided to each Member not later than six months after the close of each fiscal year. The Authority shall act upon any recommendations of the report within six months after receipt of the report, unless prompter action is required.

3. As required in the PPA with the USACE, the Authority shall establish procedures for keeping and auditing the books and records of the Authority, and such books and records are subject to audit by the USACE.

§3.09 *Withdrawal of a Member.*

¶3.09.A A Member may withdraw from the Authority only if approved by the Directors and Members as provided in ¶3.05.B. Before such approval, the Board and withdrawing Member must enter into an agreement which (i) may not, in the opinion of bond counsel for each Debt Instrument, or without the consent of the payee, beneficiary or holder of all Debt Instruments and financing agreements, violate or impair the full enforcement of any terms or provisions of all existing Debt Instruments and financing agreements; (ii) may not impair the collection or pledge of Gross Revenues for the remaining term of Debt Instruments or financing agreements in place at the time of the withdrawal; (iii) may not cause delay or impair or interfere with any construction in progress or cause a violation of the PPA; (iv) must preserve integrity, intended level of protection and functionality of existing and future Flood Management Facilities; and (v) must provide for the operation and maintenance of Flood Project Facilities within the withdrawing Member's Jurisdiction.

¶3.09.B Unless otherwise approved in writing when the withdrawal is approved, the withdrawal of a Member:

1. Does not revoke, modify or otherwise impair the delegation of any power by the withdrawing Member contained in this Agreement with respect to the assessing and collecting of fees rates and charges by the Authority within the jurisdiction of the withdrawing Member. The Authority may continue to charge, impose, levy, collect, and revise fees rates and charges as established in this Agreement and such fees rates and charges remain effective and enforceable as against properties or individuals residing within the boundaries of the withdrawing Member to the same effect as if the withdrawing Member has not withdrawn.

2. Does not revoke, modify or impair any pledge of revenues or other obligations contained in this Agreement or any financing agreement which was relied upon in connection with the issuance of any Debt Instrument issued under this Agreement.

3. Does not discharge, amend, or impair any indemnifications under this Agreement, or any liability of the Withdrawing Member under NRS 277.130 except any liability or obligation arising out of conditions, circumstances or the conduct of Members which first occurs after the date of withdrawal.

4. Does not dissolve or terminate the Authority, which shall continue in existence under this Agreement.

5. Does not amend the boundaries of the Authority as they existed on the date of withdrawal.

§3.10 *Dissolution of Authority*

¶3.10.A Dissolution of the Authority may be accomplished only when approved as provided in ¶3.05.B or by order of a court of competent jurisdiction. Any agreement to dissolve the Authority must adequately provide for the repayment of and performance of all covenants in all outstanding Debt Instruments and financing agreements, the PPA, and all other agreements of the Authority.

¶3.10.B Distribution of Assets Upon dissolution of the Authority the conferred functions, delegated powers, revenues, assets, obligations and liabilities of the Authority:

1. Shall first be offered to a Member who enters into an agreement to assume all of the regulatory responsibilities and all of the obligations of the Authority hereunder and under all Debt Instruments and other contracts of the Authority, and to continue the construction, operation and maintenance of the Flood Management Facilities; or

2. If not distributed as provided above, may be sold or conveyed to another public agency as provided in NRS 277.050 or 277.053 who enters into an agreement to assume all of the regulatory responsibilities and all of the obligations of the Authority hereunder and under all Debt Instruments and agreements of the Authority and continue the construction, operation and maintenance of the Flood Management Facilities *provided, however,* that the conferred functions and powers delegated hereunder are terminated with the dissolution of the Authority, but each Member may enter into a new agreement with the entity conferring functions and delegating powers; or

3. If not so conveyed as provided above, (i) all functions conferred and powers delegated by each Member are terminated; (ii) all Flood Management Facilities that lie within the boundaries of each Member shall be conveyed to such Member; and (iii) centralized assets shall be liquidated and all cash and funds shall be first be distributed for the repayment of Debt Instruments and financing agreements, any surplus shall be distributed (unless otherwise agreed) as follows: (a) to the extent federal funds were used to acquire the liquidated assets, proceeds will be distributed in accordance with federal law, (b) the balance in the Truckee River Flood Management Infrastructure Fund shall be distributed to Washoe County, and (c) all remaining funds shall be distributed to the Members in accordance with the dissolution agreement.

////////////////////////////////////NOTHING FOLLOWS ON THIS PAGE////////////////////////////////////

INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

**Article 4 REGULATION, PLANNING AND MANAGEMENT OF
FLOOD WATERS AND FLOODPLAINS.**

§4.01 *Regulatory powers.*

¶4.01.A Public purpose; conferred functions and delegation of powers.

The Members confer the following functions to the Authority and delegate the powers on a *non-exclusive* basis, necessary and incidental to accomplish those functions and through the Board, agree to cooperatively plan and implement the Flood Management Facilities to regulate flood waters for the purpose of preventing the loss of life and property, preventing the disruption of essential public safety services, preventing the disruption of commerce and essential services which have adverse economic impacts, preventing waste of water from floods, providing for improved quality of water, providing for ecosystem restoration and enhanced recreational facilities, providing for and safeguarding the public health, and implementing and protecting the Truckee River Flood Management Project. The exercise of regulatory actions taken on behalf of, or with respect to, residents, businesses and any entities assessed fees by the Authority shall include those taken by its Members as well as those by the Authority directly.

§4.02 *Application review*

¶4.02.A Preamble; Project Partnership Agreement Responsibilities

1. Before the USACE will cost share a flood damage reduction project, it requires the non-federal project sponsor to enter into a Project Partnership Agreement which must contain language in accordance with Engineering Regulation ER 1165-2-131 and as explained in Engineering Pamphlet 1165-2-1, subparagraphs 13 b and 13 d, and as further explained in the Project Partnership Kit (IWR Report No. 96-R-10 – revised January 2001). Under a draft Project Partnership Agreement proposed in 2006 which incorporates model Project Partnership Agreement language, the Authority is required to (i) annually inform affected interests of the extent of protection afforded by the flood damage reduction features, [Article III, Paragraph O]; (ii) prepare and implement a floodplain management plan (as required by Section 402 of the Water Resources Development Act of 1986) designed to reduce the impacts of future flood events in the project area, including but not limited to addressing those measures to be taken by the Authority to preserve the level of flood protection provided by the flood damage reduction features, [Article III Paragraph Q]; (iii) publicize and provide floodplain information in the area concerned to zoning and other regulatory agencies for their use in

adopting regulations, or taking other actions to prevent unwise future development and to ensure compatibility with protection levels provided by the flood damage reduction features [Article III, paragraph R]; and (iv) prevent obstructions or encroachments on the project including prescribing and enforcing regulations to prevent such obstructions or encroachments such as any new developments on project lands, easements, and rights of way or the addition of facilities which might reduce the level of protection the flood damage reduction features afford, reduce the outputs produced by the ecosystem restoration features, hinder operation and maintenance of the project, or interfere with the project's proper function. [Article III, Paragraph S].

2. ~~To achieve these requirements,~~ The Members agree that the Authority must monitor proposed land use changes and development and construction in the project area to endeavor to ensure that they do not change drainage patterns, or increase the quantity, timing and duration of flows in a manner that adversely affects the Flood Management Facilities built or to be built under the Truckee River Flood Management Project.

¶4.02.B Local Code Amendments; Content and adoption

1. From time to time, the Authority may propose floodplain management and flood control plans and regulations for Members to consider for adoption as amendments to appropriate parts of their Development Codes (the “**Amendments**”). The proposed Amendments shall be developed in cooperation and collaboration with the Members and other stakeholders (as defined and established in Authority regulations) and shall be designed to (i) preserve the level of flood protection as set out in the Facilities Plans, (ii) alleviate the adverse impact of developments and construction activities on Flood Management Facilities and floodplain management; and (iii) ensure compliance with the PPA.

2. Matters to be submitted to Authority.

a. For review and comment. The proposed Aamendments shall include a requirement that the following items shall be sent to the Authority for review and comment under paragraph 4.02.B of this Agreement:

- i. All Master Plan updates and amendments initiated by a Member.
- ii. ~~[Text in October 1 Draft: Applications for approval of amendment to special use permits and planned developments if the development or project in question (a) would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe); and (b) it is reasonably believed that there would be a change of the hydrologic response of the project site]~~

Applications for initial approval of, or amendments to, special use permits and planned unit developments if (a) the development or project in question would ultimately discharge or drain into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe); and (b) it is reasonably believed that the approval sought would potentially change the hydrologic response generated by the project site.

- iii. ~~[Text in October 1 draft: Applications for approval or amendment of tentative maps if the development or project in question would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe), except that applications for tentative maps need not be sent to the Authority for review and comment if the development or project in question has already been submitted and reviewed as a planned development under subparagraph 4.02.B.2.a.ii next above and during such review, the Authority has not reserved the right to review and comment on tentative maps as they are developed.] Applications for initial approval of, or amendment to, tentative maps if the development or project in question would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe). Applications for tentative maps are not subject to review and comment by the Authority and need not be sent to the Authority if the development or project in question is a final approved planned unit development.~~
- iv. ~~[Text in October 1 Draft: Applications for grading permits where the grading is a part of an overall development or project that (a) has not already been reviewed by the Authority as a part of a planned development, special use permit, or tentative map; (b) would drain into the Truckee River or a Key Tributary; and (c) exceeds the area or other threshold criteria established by regulation of the Authority.] Applications for grading permits where the grading is a part of an overall development or project that (a) has not already been reviewed by the Authority as a part of a planned unit development, special use permit, or tentative map; (b) would drain into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe); and (c) exceeds the area or other threshold criteria established by regulation of the Authority.~~

- v. ~~{Text in October 1 draft: Other applications established by Authority regulations approved as provided in Paragraph 3.05.B of this Agreement for projects where it is reasonably believed that there would be a change of the hydrologic response of the project site.}~~ Applications for those types of new development projects specified by Authority regulations approved pursuant to Paragraph 3.05.B of this Agreement or required by Development Codes to be submitted to the Authority where (a) such new projects would ultimately discharge or drain water into the Truckee River or a Key Tributary (except for projects or developments that drain into Lake Tahoe); and (b) where it is reasonably believed that the new development would potentially change the hydrologic response generated by the project site.

b. For information only. The proposed amendments shall provide that applications for (i) Master Plan Amendments initiated by land owners, (ii) zoning amendments, (iii) parcel maps, and (iv) tentative maps, grading permits and special use permits not required to be submitted for review and comment to the Authority under subparagraph 4.02.B.2.a ~~next~~ above, ~~and parcel maps~~ will be forwarded to the Authority ~~but~~ for information purposes only, and not for review or comment.

c. Not to be submitted at all. The parties agree that applications for any approvals not described in subparagraph 4.02.B.2.a or 4.02.B.2.b above, including, without limitation applications for final maps, map extensions, annexations, records of survey, boundary line adjustments, variances, minor deviations and building permits are not subject to review and comment by and need not be submitted to the Authority at all.

3. The proposed Amendments shall establish a process for referring the matters identified in subparagraph 4.02.B.2.a above to the Authority for review and comment, including a requirement that the Authority must respond in writing within the deadlines established by the approving body, and that if the Authority fails to provide written determinations and recommendations by that deadline, the matter will be presented to the approving body without such recommendations and determinations. If the Authority fails to provide written determinations and recommendations on time and also fails to appear before the approving body, it shall be deemed to have waived any right of appeal to the Member's governing body or right to seek judicial review of the approving body's decision.

4. Once any proposed Amendments are agreed upon by Member and Authority staffs, they shall promptly be presented to the Member's planning commission or governing body for consideration in its sole legislative discretion. The Members' Planning Commission or Governing Body shall take action on proposed amendments within 6 months of their proposal following the Member's established process.

5. If a Member's planning commission or governing body does not timely adopt in its Development Code provisions substantially the same as the Amendments proposed under ¶4.02.B.1, the Board shall review what was adopted and take appropriate action to protect the Flood Management Facilities or honor its obligations under the PPA or other commitments. Fees, rates and charges shall not be imposed under §6.01 of this Agreement until all Members have adopted the Amendments set forth under ¶4.02.B.2 of this Agreement.

¶4.02.C Policies, Procedures, and Thresholds for Application Review.

1. Authority staff shall review matters referred to the Authority for review and comment under subparagraph 4.02.B.2.a above to ensure the activities will not have an adverse impact on the Flood Management Facilities or the functioning of the Truckee River Flood Management Project and advise Member staffs of their findings. A separate permit or approval shall not be required from the Board. Member staffs shall include all written comments by the Authority in their written presentations to the planning commission and governing body, but are not obligated to agree with or recommend approval of those comments and may make their own comments in their professional discretion.

2. The Authority shall adopt standards and procedures for Authority staff to follow in making determinations and recommendations regarding future land use and development.

3. The Authority may acquire, operate and maintain one or more hydraulic, hydrological or other types of models or other tools to determine the conveyance capabilities of the Flood Management Facilities and to assist in estimating the possible effects of the development of land or other events or circumstances on flooding, flood control plans, floodplain management plans, or the Flood Management Facilities. If the Authority develops a regional hydrologic model, it shall cooperatively, through the Hydrologic Modeling Team, establish policies and procedures regarding ownership, quality control, quality assurance, operation and use of such model, including the use of the model by private entities.

¶4.02.D Interagency Hydrologic Modeling Team

1. The Executive Director shall assemble and administer an Interagency Hydrologic Modeling Team to advise the Executive Director on all matters relating to the design, operation, maintenance, use, and results of all hydrological models contemplated under subparagraph 4.02.C.4 above. Members of the committee shall have the power to examine all documents, codes, operating instructions, data, and runs and results of any hydrologic model owned or used by the staff of the Truckee River Flood Management Project.

2. The city and county manager of the Members and the Executive Director of the Authority shall each appoint an equal number of voting members to the ~~team committee~~. Such appointments may be informal and may be ex officio and may be ad hoc for a particular meeting, and the members of the ~~team committee~~ shall serve at the pleasure of their appointing authority. Nonvoting members may also be appointed.

3. The voting members of the ~~team committee~~ shall elect a chair each year and a person may serve more than one term as chair. The chair shall call meetings of the ~~team committee~~ and prepare an agenda. The meetings are staff level functions for the purpose of providing advice to the Executive Director and as such will not be governed by the Nevada Open Meeting Law.

§4.03 *Agreements of Authority.*

The Authority may enter into any agreements with other agencies or private individuals regarding the flow and control of floodwaters, the prevention or minimization of, the planning for or reaction to floods with respect to resources and powers of the Authority. If an agreement involves the resources of or legislative powers of a Member, the governing body of the Member must also approve the agreement.

§4.04 *Other regulations of Authority*

The Authority shall have the power to enact and enforce policies and regulations regarding internal operating procedures, and the use, operation, and maintenance of property owned (including easements) by the Authority, which must be approved by the Board in accordance with ¶3.05.B.

§4.05 *Flood Management Plans and Capital Improvement Plans.*

¶4.05.A The Authority shall prepare and from time to time amend Flood Management Plans and Capital Improvements Plans describing the system of Flood Control Facilities to manage and control flood waters passing through the Truckee River Flood Management Project to prevent damage from floods.

¶4.05.B Initially, the Authority shall adopt the most current version of the “Living River Plan” which has been approved by the Flood Project Coordinating Committee as the Flood Management Plan, and may thereafter from time to time approve changes and amendments as provided in [¶3.05.B]

§4.06 *Regional Comprehensive Water Plan; membership in the Northern Nevada Water Planning Commission.*

¶4.06.A Preamble. In accordance with Section 42 of the Western Regional Water Commission Act, the Northern Nevada Water Planning Commission and Western Regional Water Commission (as defined therein) are responsible for preparing and

adopting a Comprehensive Plan which must contain, among other things, plans and standards regarding the control of floods. Each of the Members has a seat on the Northern Nevada Water [Planning](#) Commission and the [Western](#) Regional Water [Planning](#) Commission and the Members agree that a coordinated planning effort through the Board with respect to the flood control aspects of the Comprehensive Plan is the best approach.

¶4.06.B Flood control and floodplain management plans and amendments. In cooperation and coordination with planning staffs for each Member, and working in unison with Members' individual flood management facilities plans in their master plans, the Authority shall prepare and from time to time update, expand or amend floodplain management and regional flood control master plans or proposals for inclusion in the Comprehensive Plan prepared by the Northern Nevada Water Planning Commission to be adopted pursuant to Section 41 of the Western Regional Water Planning Act.

¶4.06.C Legislative discretion of Commissions. It is understood that members of the Northern Nevada Water Planning Commission and the [Western](#) Regional Water [Planning](#) Commission shall exercise their legislative discretion on all reports, plans and recommendations by the Board, notwithstanding how Board members voted on them previously. A vote on an item by a Member's Director does not obligate a similar vote by representatives of the Member on either commission.

¶4.06.D Membership on Northern Nevada Water Planning Commission. The Members hereby agree to request the appointment of a representative of the Authority to be a voting additional member of the Northern Nevada Water Planning Commission with expertise in the area of flood control in accordance with Subsection 9 of Section 37 of the Western Regional Water Commission Act.

§4.07 *Regional Master Plan*

¶4.07.A The Authority shall propose to the Regional Planning Commission plans and information contemplated by NRS 278.0274 (2) and (5) regarding floodplain management or Flood Management Facilities for inclusion in the Regional Plan adopted under NRS 278.0276.

¶4.07.B Each Member hereby agrees that if the Member appears before or submits any material to the Regional Planning Commission and/or the Regional Planning Governing Board with respect to

- i. The adoption or amendment of the regional plan under NRS 278.0276;
- ii. The guidelines and procedures for review of a project of regional significance under NRS 278.0277; or
- iii. Amendments to the Member's master plan as provided in ¶4.02.B.2.a.(i).

↳ the Member shall include any written material provided by the Executive Director that pertains to any Flood Management Facility or floodplain management plan approved by the Board or any determination based on application of the Flood Impact Model under ¶4.02.C.3, but the Member staff is not obligated to agree with or recommend approval of the comments and recommendations of the Authority and may submit its own comments in its professional discretion.

¶4.07.C Unless otherwise instructed by the Board, the Executive Director may appear before the Regional Planning Commission or Regional Planning Governing Board without prior approval by the Board but must obtain prior approval by the Board before seeking judicial review of any decision by the Regional Planning Governing Board.

§4.08 *Emergency Management Obligations and Powers of the Authority.*

¶4.08.A Planning Recommendations.

In cooperation and coordination with the planning staff of each Member, the Authority ~~may shall~~ prepare recommendations relating to flood control and floodplain management for inclusion in an emergency management plan under NRS 414.095, or in an interstate cooperative plan pursuant to NRS Chapter 415.

¶4.08.B Planning Privileges and Immunities. With respect to the preparation of inundation maps, the uses of the Flood Impact Model, and all plans approved by the Board under this Article, and with respect to the design, construction, operations and maintenance of facilities under Article 5 of this Agreement, it is the intent of the Members to confer the privileges and immunities that the Members have under NRS 404.110 to the fullest extent authorized under the law.

¶4.08.C Operational privileges and immunities. With respect to actions taken during an emergency by the Directors, officers and employees and contractors acting within the scope of their duties, to the extent permitted by law, it is the intent of the Members to confer on the Authority the functions and powers of a local organization for emergency management with respect to the conferred powers under this Article and Article 5 of this Agreement, *except that* (i) neither the Authority nor any of its directors, officers, or employees shall have any express or implied auxiliary police powers, and (ii) all powers conferred hereby are subordinate to any powers of the Members and to any powers of any organization for emergency management established by any one or combination of the Members.

¶4.08.D Flood Warning System. As a part of its emergency management powers and regulatory duties hereunder, the Authority shall assume the responsibilities of equipping, operating and maintaining an early flood warning system that was formerly operated under a series of interlocal agreements.

¶4.08.E Emergency Management Agreements The Authority may enter into agreements with other agencies or private individuals in furtherance of emergency management and planning under NRS Chapters 414, 415, or 416 with respect to resources under the control of the Authority. Any agreement with respect to the resources or legislative powers of a Member must be approved by the governing body of the Member.

§4.09 *Plans and relations with the United States.*

¶4.09.A The Authority shall have the exclusive authority:

- i. to enter into a Project Partnership Agreement with the United States Army Corps of Engineers with respect to the [Truckee River Flood Management](#) Project;
- ii. to prepare and approve the National Economic Development Plan, a Locally Preferred Plan, General Reevaluation Report, Environmental Impact Statements and all other plans and documents (including but not limited to monitoring plans, adaptive management plans, and floodplain management plans) pursuant to a Project Partnership Agreement with the Corps or as necessary to obtain Congressional authorization for the Flood Project.

¶4.09.B Provided that such agreements, plans and submissions are reasonably consistent with the current Living River Plan and Capital Improvement Plan the Authority may accomplish the foregoing without further ratification or approval.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 5 PLANNING, CONSTRUCTION, OPERATION AND MAINTENANCE OF PROJECT.

§5.01 *Facilities, and Capital Improvement Plans.*

¶5.01.A The Board shall prepare and from time to time update Facilities Plans describing the proposed Flood Management Facilities for the entire Truckee River Flood Management Project.

¶5.01.B The Board shall establish the overall order of construction of the Flood Management Facilities, and shall develop a running list of construction projects to be accomplished over the next ten years. The list is for planning purposes only and does not constitute an obligation of the Board, or any future Board, or an express or implied appropriation of funds.

¶5.01.C Each fiscal year, the Board shall prepare, update and submit a plan for capital improvement for the ensuing 5 fiscal years as required by NRS 354.5945. The Capital Improvement Plan shall be approved by the Board as provided in ¶3.05.B of this Agreement, and is binding on the Board until amended.

§5.02 *Project Partnership Agreement; TRAction Projects.*

¶5.02.A PPA.

1. Upon project authorization by the United States Congress, the Authority may enter into a Project Partnership Agreement (**PPA**) with USACE establishing the rights and responsibilities of the Authority (as a non-federal sponsor) and the USACE with respect to the design, financing, construction, operation and maintenance of the Truckee River Flood Management Project.

2. Each Member agrees that the PPA is binding on the Member and not to take any action that would cause a violation of the PPA.

¶5.02.B TRAction Projects.

The Authority may from time to time pursue “TRAction” (Truckee River Action) projects to be commenced prior to the PPA. As it pursues TRAction Projects, the Authority shall (i) obtain, if appropriate, determinations from USACE that a portion of the cost of the project could be credited against the Authority’s “non-federal sponsor cost

share” of the project if a PPA is entered into, and (ii) enter into appropriate design, financing, and construction contracts.

§5.03 *Design and Construction Standards; Additional Features or Specifications by Members.*

¶5.03.A All Flood Management Facilities shall be designed or approved by USACE, and except as provided next below, all Facilities shall be constructed in accordance with the approved design and construction specifications. Construction contracts entered into by the Authority or any Member shall incorporate such requirements.

¶5.03.B If a Member desires to alter the design or add to or alter a Flood Management Facility within its boundaries in order to construct an additional feature (including a recreational facility), or implement a specification or construction standard that adds to or exceeds the design or specifications approved under ¶5.03.A, the Member shall petition to the Board, and the Board shall not unreasonably withhold approval, provided that (i) the Board determines that the new feature, specification or standard does not conflict with the full implementation of the approved design, features, specifications and construction standards, and does not impair the level of protection afforded by the Flood Management Facility as originally designed; and (ii) an agreement is entered into regarding the payment of expenses and costs, the operation and maintenance of the Flood Management Facility in light of the new design, feature, specification or standard, and appropriate indemnifications to the Authority by the Member.

§5.04 *Acquisition of Property; Payment of Relocation Obligations.*

Unless otherwise agreed in a TRAction or other agreement, the Authority shall acquire all required land, easements, rights of way, and disposal sites and shall pay all relocation expenses as required by state and federal law.

§5.05 *Construction of Facilities*

¶5.05.A As funds become available, the Board shall plan, schedule and enter into and administer contracts for the construction of all Flood Management Facilities in accordance with the PPA and approved Capital Improvement Plans.

¶5.05.B Before soliciting bids or entering into any agreement for the construction of a Flood Management Facility, the Board shall first determine who will own, operate and maintain the Flood Management Facility, and if someone other than the Authority will own, operate or maintain the Flood Management Facility, the Board shall enter into an agreement with that party to the Board’s satisfaction.

¶5.05.C If a PPA is entered into, all Flood Management Projects will be constructed by USACE, except (i) when otherwise agreed with USACE; (ii) when the

Board determines that it does not intend to pursue any funding or cost sharing from USACE; or (iii) TRAction Projects.

¶5.05.D With respect to TRAction Projects, unless otherwise agreed, the Authority shall solicit bids or proposals for the design and construction of Flood Management Projects and enter into and administer construction contracts. The Board may enter into construction management contracts with a Member or third party.

§5.06 *Ownership of Facilities and Property Interests; Disposition*

¶5.06.A The Authority shall own all Flood Management Facilities and all property interests acquired, except pursuant to an agreement approved under ¶5.05.B or as otherwise approved by the Board on a case by case basis.

¶5.06.B Title to recreational equipment and facilities placed on Flood Management Facilities may be vested in any entity or entities that fund and maintain them, provided that proper use and indemnification agreements are entered into.

¶5.06.C If the Authority conveys Flood Management Facility property to a Member, the deed shall contain a reversionary interest to the Authority which provides that if the grantee fails to operate and maintain the Facility or property interest as a Flood Management Facility consistent with the reasonable directives of the Board and the requirements of this Agreement, legal title to the property shall revert to the Authority.

¶5.06.D Disposal of Facilities and Property Interests.

1. Real Property. If the Board determines that an interest in real property held by the Authority is no longer needed for the Truckee River Flood Management Project, the Board shall dispose of the fee title the same way that a board of county commissioners is required under NRS 244.279 through 244.290.

2. Fixtures and Personal Property.

a. Fixtures. Unless otherwise provided by resolution of the Board, fixtures shall be transferred with the real property to which they are affixed.

b. Transfer of personal property to Member. As determined by the Board, personal property may be transferred to any Member without consideration.

c. Donation of Personal Property. The Board may, by resolution, donate commodities, supplies, materials and equipment that the Board determines to have reached the end of their useful lives to any other governmental entity, or to a nonprofit organization created for religious, charitable or educational purposes to be used for any purpose which will provide a substantial benefit to the inhabitants of the Members,

provided that the Board follows the procedures and observes the limitations in NRS 244.1505, as amended.

d. Sale of Personal Property. The Board or its designee may dispose of personal property in accordance with NRS 332.185.

§5.07 *Operation and Maintenance of Facilities, Emergency Powers of Members*

¶5.07.A Except as provided in ¶5.07.E, the Authority shall have exclusive control and responsibility over the operation and maintenance of Flood Management Facilities as follows.

¶5.07.B The Executive Director shall prepare and keep current written inspection and maintenance plans for each Flood Management Facility.

¶5.07.C The Authority shall be responsible for scheduling and conducting periodic inspections and causing maintenance and repairs to be made in accordance with the inspection and maintenance plans and best management practices for such facilities.

¶5.07.D The Authority shall be the exclusive agency to respond to inquiries and maintenance instructions by the USACE pursuant to the PPA and USACE regulations. If a Member has agreed to be responsible for the operations and maintenance of a Facility, the Member shall comply with the instructions of the Authority in response to such inquiries or instructions by the USACE, provided that funding is provided by the Authority.

¶5.07.E If a Member desires to operate and maintain a Flood Management Facility within its boundaries, the Authority shall enter into a contract with the Member to perform operational, maintenance and repair services to be paid for by the Authority on terms satisfactory to the Board. Unless otherwise specifically agreed in writing, the Member shall follow all operational, maintenance and repair standards and policies established by the Board. The Board will grant a non-exclusive easement to the Member which is subject to termination at the discretion of the Board if a term of the agreement or this provision is violated.

¶5.07.F The Authority may enter into agreements with third parties to perform operational, maintenance and repair services. Unless otherwise specifically agreed in writing, the contractor shall follow all operational, maintenance and repair standards, directives and policies established by the Board either before or after the agreement is entered into. The Board will grant a non-exclusive easement to the contractor which is subject to termination at the discretion of the Board if a term of the agreement or this provision is violated.

¶5.07.G Notwithstanding ownership of the Flood Management Facility, or any provision in this Agreement to the contrary, each Member reserves to itself its emergency

powers to deal with Flood Management Facilities during a natural disaster in a manner consistent with the Member's public safety responsibilities. Such powers reserved include, but are not limited to, the power to take temporary possession of or exclude any person from access to the Flood Management Facility, and adding to or altering the Flood Management Facility to reduce imminent threats to public safety and property damage.

§5.08 *Repair and Replacement*

¶5.08 The Authority shall provide for the repair and replacement of all Flood Management Facilities it owns, including:

1. Establishing reserves under §6.06 of this Agreement.
2. Providing property insurance or otherwise providing for repairs and replacements due to catastrophic casualties as provided in §6.06 of this Agreement.

§5.09 *Early Warning System.*

¶5.09.A The Early Warning System is a system composed of a series of stream and precipitation gauges, transmission equipment, computer data collection and distribution system, and equipment and software to transform the data into useable information for regional emergency flood response. In 1999, the system was significantly upgraded under an agreement between USACE and Washoe County Department of Water Resources as the "non-federal sponsor." In July of 2010, County, on behalf of the Truckee River Flood Management Project, assumed full operational and maintenance responsibility for the system and then entered into [an interlocal](#) agreements with the United States Geological Service, ~~the Cities of Reno and Sparks and other entities~~ to share the operations and maintenance costs of the warning system.

¶5.09.B Washoe County, the City of Reno, and the City of Sparks shall terminate all agreements relating to the Early Warning System.

¶5.09.C The Authority shall communicate information with the Members in accordance with a procedure to be established by agreement between the city/county managers of the Members, and other applicable entities and the Executive Director.

INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 6 REVENUES AND FINANCING OF PROJECT

§6.01 Fees, Rates and Charges.

¶6.01.A Functions Conferred; Powers Delegated; Agreements not to Impair Powers.

1. Functions conferred.

a. County, Reno, and Sparks hereby confer, delegate and agree that in order to acquire, improve, equip, operate and maintain a Flood Management Project and to ensure the payment, in whole or in part, of obligations of the Authority under Debt Instruments, financing agreements, for a Flood Management Project, the Board may establish, maintain and, from time to time, revise a schedule or schedules of fees, rates and charges for services or facilities, or both services or facilities rendered by or through the Flood Management Project in an amount sufficient for the foregoing purposes and also sufficient to discharge any covenant in the proceedings of the Board authorizing the issuance of any such Debt Instruments or financing agreements, including any covenant for the establishment of reasonable reserve funds.

b. The Authority may use and irrevocably pledge the revenues of such fees, rates, and charges (“**Fee Revenues**”) as permitted by SB 175.

2. Delegations and Nonimpairment Agreements by County. Subject to possible termination under §3.09 and §3.10, Washoe County irrevocably delegates to the Authority the powers and rights of the County under state law now existing or after acquired which are necessary and incidental to accomplish the function conferred under this Article 6. The County covenants that the powers delegated hereunder and the Fee Revenues shall not be repealed, amended, or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding Debt Instruments or other obligations of the Authority (including obligations undertaken to operate and maintain the Flood Management Project) secured by such Fee Revenues until all such Debt Instruments and obligations have been discharged in full or provision for their payment and redemption has been fully made, including without limitation the known minimum yield from the investment or reinvestment of moneys pledged therefor in federal securities.

3. Delegations and Nonimpairment Agreements by Reno. Subject to possible termination under §3.09 or §3.10, Reno irrevocably delegates to the Authority the powers and rights of Reno now existing or after acquired under state law and including lien rights granted to Reno which are necessary and incidental to accomplish

the function conferred under this Article 6. Reno covenants that the powers delegated and the Fee Revenues shall not be repealed, amended, or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding Debt Instruments or other obligations of the Authority (including obligations undertaken to operate and maintain the Flood Management Facilities) secured by such revenues until all such Debt Instruments and obligations have been discharged in full or provision for their payment and redemption has been fully made, including without limitation the known minimum yield from the investment or reinvestment of moneys pledged therefor in federal securities.

4. Delegations and Nonimpairment Agreements by Sparks. Subject to possible termination under §3.09 or §3.10, Sparks irrevocably delegates to the Authority the powers and rights of Sparks now existing or after acquired under state law and including lien rights granted to Sparks which are necessary and incidental to accomplish the function conferred under this Article 6. Sparks covenants that the powers delegated and the Fee Revenues shall not be repealed, amended, or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding Debt Instruments or other obligations of the Authority (including obligations undertaken to operate and maintain the Flood Management Facilities) secured by such revenues until all such Debt Instruments and obligations have been discharged in full or provision for their payment and redemption has been fully made, including without limitation the known minimum yield from the investment or reinvestment of moneys pledged therefor in federal securities.

¶6.01.B The Authority shall hold public hearings and impose such fees, rates, and charges uniformly between the Member jurisdictions and in accordance with Nevada law, and shall obtain judicial confirmation in accordance with NRS Chapter 43.

¶6.01.C The resolution imposing such fees, rates and charges shall provide for the method and manner of collection and enforcement (including lien foreclosure to the extent applicable).

¶6.01.D The indemnifications contained in ¶7.02.B apply to all actions taken by the Authority in imposing and collecting such fees, rates, and charges.

¶6.01.E The Authority is responsible for overseeing of the collection of all fees, rates and charges that comprise Fee Revenues. If a Member is involved in such collection process, such activity will be handled pursuant to a third-party administrative contract.

§6.02 Infrastructure Tax.

¶6.02.A The Infrastructure Tax is collected by the State of Nevada Department of Taxation and remitted to the County pursuant to procedures established in NRS Chapter 377B and an agreement between the County and the Nevada Department of Taxation. Washoe County has issued bonds and other debt instruments secured by the Infrastructure

Tax for other projects (a public safety training center and a regional dispatch center), pledging the Infrastructure Tax as security for their repayment. Also under NRS Chapter 377B, the County and its Board of County Commissioners is responsible for proper administration of the tax and its proceeds, which responsibility cannot be completely delegated to another entity. Accordingly, the following provisions shall apply to the Infrastructure Tax.

¶6.02.B Collection and Accounting; Establishment of Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues .

1. County shall continue to receive and account for the net proceeds of the Infrastructure Tax pursuant to state law and its agreement with the Department of Taxation, and shall deposit such net proceeds into the Truckee River Flood Management Infrastructure Fund as required by NRS 377B.150. The Truckee River Flood Management Infrastructure Fund shall remain under the exclusive control of the County as required by law.

2. Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues (as defined in Article 1 of this Agreement) shall be transferred monthly within five business days after receipt of proceeds of the Infrastructure Tax from the State of Nevada.

¶6.02.C Infrastructure Tax Plan

1. As required by NRS 377.100 (6) Washoe County has adopted and amended the Infrastructure Tax Plan, and under NRS 377B.160 (2) the Infrastructure Tax may only be expended by the Board of County Commissioners for specific projects as defined in the statute, and pursuant to the Infrastructure Tax Plan. The second amendment to the Infrastructure Tax Plan provides that powers to amend the plan with respect to the Truckee River Flood Management Project may be delegated to a Flood Management Authority created under NRS Chapter 277 to govern a Flood Management Project.

2. To the extent permitted by law, and subject to the provisions of ¶6.02.E below, the Board of County Commissioners hereby delegates to the Board the following powers, and agrees as follows:

- a. The Board may from time to time amend the following provisions of the Infrastructure Tax Plan for the Truckee River Flood Management Project:
 - i. “Cost of Truckee River Flood Management Project” (presently appearing in §A1.6 of the Second Amendment to the Plan);
 - ii. Financing Plan for the Truckee River Flood Management Project (presently appearing in §A1.7 of the Second Amendment to the Plan); and

- iii. Expenditure List for the Truckee River Flood Management Project (Presently appearing in Appendix C to the Second Amendment to the Plan).

b. All such amendments shall recite to the delegation hereunder and shall be sent to the County Clerk so that they may be attached to the overall Infrastructure Tax Plan. All other changes or amendments to the Infrastructure Tax Plan must be approved by the Board of County Commissioners.

¶6.02.D Pledge of Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues; Covenant not to Impair Funds.

1. County hereby irrevocably pledges and agrees to pay to the Authority the Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues for its use under this Agreement. This pledge constitutes a lien against the Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues under NRS 377B.200.

2. The Board shall have the sole and exclusive power to pledge the Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues to the repayment of Debt Instruments or other obligations of the Authority, or to pay the Authority's operating and maintenance expenses.

3. If requested by the Authority in connection with a Debt Instrument, County agrees to provide any document or take any action to affirm or ratify the pledge of Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues.

4. County hereby covenants that the Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues shall not be repealed, amended, or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding Debt Instruments or other obligations of the Authority (including obligations undertaken to operate and maintain the Flood Management Facilities) secured by such revenues until all such Debt Instruments and obligations have been discharged in full or provision for their payment and redemption has been fully made, including without limitation the known minimum yield from the investment or reinvestment of moneys pledged therefor in federal securities.

5. The County hereby agrees not to allow the Infrastructure Tax Plan to expire with respect to the Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues unless and until the pledge hereunder is released or terminated by the Authority.

6. Consistent with foregoing pledges and covenants, County understands and agrees that funding from the Infrastructure Tax may only be used to pay County obligations identified in the definition of "Truckee River Flood Management Infrastructure Fund Flood Project Net Revenues" and then only for the Truckee River Flood Management Project.

¶6.02.E Limitations and consent provisions.

1. The delegations and provisions of this section 6.02 are subject to and enforceable only to the extent permitted by law.
2. If it is determined that any provision in this section 6.02 is not authorized by law, then the parties agree to amend this Agreement to bring it within the limits of enforceability while preserving the intentions of the parties under this Agreement.
3. To the extent that an amendment to this Agreement cannot be reached or to the extent that an action or matter with respect to the Infrastructure Tax or Truckee River Flood Management Infrastructure Fund must be acted upon by the County, such action or matter shall be referred to the County, and the County agrees to act on such a referral within 60 days from the referral, and not to unreasonably withhold approval, provided, however, that the County board of county commissioners may withhold approval if it reasonably believes:
 - i. That the proposed action conflicts with the Infrastructure Tax Plan, the Infrastructure Tax Ordinance, or with the requirements of NRS Chapter 377B or applicable law;
 - ii. That the proposed action would impair any outstanding bonds or obligations of the County secured in whole or in part by the Truckee River Flood Management Infrastructure Fund;
 - iii. That the matter will conflict with any State statute, or County Ordinance in effect as of the date the County's consent is requested.

¶6.02.F Statutory Enforcement Powers.

1. As the County remains primarily responsible under NRS Chapter 377B for the proper administration and application of the Infrastructure Tax, if the County believes that the Authority is taking an action that conflicts with the provisions of NRS Chapter 377B or other statute applicable to the Infrastructure Tax, the County may bring an action ~~in the Second Judicial District Court for the State of Nevada~~ for relief which may include the payment of monetary damages or injunctive relief.
2. Before commencing an action under ¶6.02.F.1, County staff shall first inform the ~~Authority Executive Director~~ of the suspect action, how it is believed to violate applicable law, and how the action may be amended to bring it within compliance with applicable law. The ~~Authority Executive Director~~ shall be given 60 days to take corrective action.

¶6.02.G The indemnifications in ¶7.02.B apply to all actions taken by the Authority with respect to the Infrastructure Tax.

§6.03 *Other Revenues*

¶6.03.A The Authority may apply for and may receive loans, grants, cost sharing arrangements, as a part of the conferred function in ¶6.01.A

§6.04 *Expenditure of Gross Revenues*

The Authority may use and pledge Gross Revenues for, and only for, the Truckee River Flood Management Project, expenses of the Authority, as provided in this Agreement, and in accordance with the laws and agreements governing such revenues.

§6.05 *Financing Flood Management Facilities.*

Under NRS 277.0705 through 277.0755 as now existing and as amended from time to time, to finance the acquisition, improvement, equipping, operation and maintenance of the Truckee River Flood Management Project, the Authority may borrow money and issue one or more Debt Instruments and in the manner provided by NRS Chapter 350, and may pledge Gross Revenues for the repayment, *provided however* that all obligations of the Authority are independent from and no Debt Instrument or financing agreement shall obligate or encumber any funds or assets of any Member.

§6.06 *Establishment of Accounts; required coverages and reserves*

¶6.06.A. General Fund – Gross Revenues shall be collected by the Authority and placed in the Authority’s General Fund.

¶6.06.B Coverage.

1. Rate Maintenance. The Authority shall maintain fees, rates and charges such that the sum of all of the Gross Revenues it receives in each fiscal year that are pledged to or to be used to pay amounts due under its Debt Instruments (except capitalized interest) are sufficient to annually produce (i) an amount sufficient to pay all operation and maintenance expenses of the Authority during the fiscal year not paid with other sources plus (ii) an amount sufficient to pay 120% of the amounts due on all Debt Instruments in that fiscal year.

2. Limit on Debt. The Authority shall not incur or enter into any Debt Instruments unless at the time of the incurrence or execution of such Debt Instruments, the Authority’s projected annual Gross Revenues available (after payment of operation and maintenance expenses of the Authority) to pay debt service under all Debt Instruments in each of the five fiscal years after any fiscal year for which all or a part of the interest on Debt Instrument is capitalized are not less than 120% of the amounts required to pay debt service under all Debt Instruments for each of these five fiscal years.

3. The foregoing requirements shall be in addition to any requirements in any Debt Instrument.

¶6.06.C Funds; Use of Monies

1. The three following funds shall be created, funded and administered by the Authority to facilitate the ongoing operation of the Truckee River Flood Management Project as follows.

- i. General Fund A general fund shall be created and all Gross Revenues shall first be placed in it. After payment of operation and maintenance expenses and all requirements of any Debt Instruments in each fiscal year, monies in the General Fund shall be applied as to the following funds, and any remainder after payment of operation and maintenance expenses, debt service and the deposits required below shall remain in the General Fund, and can be used for any lawful purpose, subject to the limitation in §6.04, in that fiscal year.
- ii. Reserve for Replacement: shall be created to cover repairs necessary for the ongoing operations of the Flood Project that have not been budgeted. Over a period of five years from the implementation of the fees, rates and charges described in §6.01 of this Agreement, this reserve shall be funded to an amount equal to ten per cent of the replacement cost of the uninsured capital structures that comprise the Flood Management Facilities and after that initial funding, the reserve shall remain at that level, subject to the curative period set out in subparagraph 6.06.C.iv below, unless a higher funding requirement or maximum reserve is provided for in the PPA, a Debt Instrument, a financing agreement or otherwise as approved by the Board as provided in ¶3.05.B of this Agreement.
- iii. Operating Reserve: shall be established in order to protect the Authority from unexpected increases in operating costs and unanticipated reductions in operating revenues. This Fund shall be used together with other available monies to fund the operations of the Flood Project until rates, fees and charges can be reapplied and collected. Over a period of three years from the date that the fees, rates and charges are implemented under §6.01 of this Agreement, this reserve shall be funded to equal 25% of each year's operating budget of the Truckee River Flood Management Project and after that initial funding the reserve shall be maintained at that level, subject to the curative period set forth in subparagraph 6.06.C.iv below unless a higher funding amount or maximum reserve is provided for in the PPA, a Debt Instrument, a financing agreement or otherwise approved by the Board as provided in ¶3.05.B of this Agreement.

- iv. Curative Period. If, after the initial funding as provided above, the Reserve for Replacement or Operating Reserve falls below the requirements stated above, the Authority shall have a period of three years to bring the reserve balance up to the required reserve amount, unless a shorter curative period is specified in the PPA, a Debt Instrument, a financing agreement or otherwise approved by the Board as provided in ¶3.05.B of this Agreement.

¶6.06.D. Other Funds and Accounts

Other funds and accounts shall be created and funded by the Authority as necessary to facilitate the operations of the Truckee River Flood Management Project and to assist in the structuring of cost effective Debt Instruments incurred by the Authority for the development of the Truckee River Flood Management Project.

§6.07 *Impairment of Gross Revenues or Debt Instruments.*

¶6.07.A If a court of competent jurisdiction invalidates, impairs or determines that the imposition and collection of Gross Revenues or the issuance and repayment of any Debt Instrument is contrary to public policy as a result of or which may be remedied by a change to any provision in this Agreement (including the delegation of powers), the parties shall amend this Agreement to bring the imposition and collection of Gross Revenues and the issuance and payment of Debt Instruments within the limits of validity and public policy.

¶6.07.B If a court of competent jurisdiction determines that the action or inaction of a Member impairs or leads to the invalidation of the imposition and collection of Gross Revenues or the issuance and repayment of a Debt Instrument, the Member shall take corrective action to cause the validity of the imposition and collection of Gross Revenues or the issuance and repayment of a Debt Instrument, or shall assume liability under any impaired Debt Instrument to the extent the impairment is caused by such uncorrected action or inaction.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 7 INSURANCE AND INDEMNIFICATIONS

§7.01 Insurance

The Authority shall obtain and maintain (i) comprehensive general liability insurance, (ii) property damage insurance for all Flood Management Facilities it owns, (iii) industrial insurance for all employees of the Authority not otherwise covered, (iii) automobile insurance, (iv) fidelity bonds for employees, and (iv) Director and Officer insurance to indemnify Directors, Officers and Employees against liability arising from conduct within the scope of work or authority.

Each Member shall be an additional insured on general liability policies, director and Officer Insurance, and on any property damage policies where the Member holds a property interest in a Flood Management Facility.

§7.02 Indemnifications.

¶7.02.A Definitions.

“Act, error or omission” includes acts, failure to act, errors, or omissions that constitute negligence, willful tortious conduct, or for which strict or imputed liability may be imposed as determined by a court of competent jurisdiction under applicable law, and further includes breaches of this agreement and/or violations of law.

“Arising out of the administration of this Agreement” means the performance of any task, obligation, responsibility or the pursuit of any right contemplated under this Agreement.

“Claims and liability” means all third party claims, actions, damages, losses, judgments, injuries, costs and expenses, (including those paid to settle the case) including but not limited to attorneys’ fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom) and other economic damages.

“Defend” includes the obligation to defend litigation at the indemnifying party’s sole expense using counsel that is reasonably acceptable to the indemnified party. Each indemnified party shall be permitted to participate at its own expense, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder.

“Related Party” includes all officers, employees, agents, contractors and subcontractors of the party who are acting within the scope of their assigned and lawful

duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

¶7.02.B By Members.

To the fullest extent allowed by law, and without waiving any immunities (except as provided under the law of Nevada, including NRS 41.0305 through NRS 41.039, as amended from time to time), each Member shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of the administration of this Agreement to the extent such liability is caused by an act, error or omission of the Member or a Related Party. “Indemnified parties” means each other Member and the Authority and their Related Parties.

¶7.02.C. By Authority

1. To the fullest extent allowed by law, the Authority shall indemnify, hold harmless and defend the indemnified parties from and against all liability:

a. for damages to property or injuries to persons caused by any one or combination of the following:

- i. the ownership, maintenance or use of land and the location, design and construction of Flood Management Facilities owned by the Authority;
- ii. the failure of a Flood Management Facility that is owned by the Authority;
- iii. the condition of the Flood Management Facilities owned by the Authority; and
- iv. an act, error or omission of the Authority or a Related Party in the administration of this Agreement.

b. arising from actions by the Authority that are determined by a court of competent jurisdiction to constitute a taking of property by the Authority without just compensation.

2. “Indemnified parties” means all Members and their Related Parties.

¶7.02.D Limitations and Conditions.

1. The parties stipulate that principles of comparative negligence as those principles are currently expressed in Nevada law should be applied in allocating or limiting liability under this Article of the Agreement.

2. The obligations of each indemnifying party hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which

would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the indemnifying party.

3. The Authority and all Members are considered as “joint employers” for any employee who performs services related to the Truckee River Flood Management Project. If liability is asserted by an employee of a party to this agreement, the indemnification herein is limited to damages, compensation or benefits payable by or for the indemnifying party under worker’s compensation acts, disability benefit acts or other employee benefit acts.

4. Each indemnified party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder.

5. Any party may set off any of its rights established by settlement or judgment under this subsection against any consideration it provides under this agreement.

6. The obligations to indemnify and save harmless herein survive the withdrawal of a Member, or the expiration or termination of this Agreement with respect to any act, error or omission which occurred before the withdrawal, expiration or early termination.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 8 RIGHTS AND OBLIGATIONS OF WASHOE COUNTY

§8.01 *Conveyance of property.*

¶8.01.A Conveyance or offer within 90 days.

1. Property acquired with proceeds of Truckee River Flood Management Infrastructure Fund. Within 90 days from being requested in writing by the Authority, Washoe County shall deliver possession of and convey title to all real property, personal property, contract rights, and cash or fund balances acquired by the County from proceeds of the Truckee River Flood Management Infrastructure Fund for the benefit of the Truckee River Flood Management Project or pursuant to its administrative duties under the 2005 Cooperative Agreement, and all books, records and documents generated or kept by the County relating to the administration of the flood project, all as provided in this Section. The County shall convey said property without consideration or cost.

2. Property acquired with other funds. Within 90 days from being requested in writing by the Authority, Washoe County shall identify all real property, personal property, contract rights, and cash or fund balances acquired by the County from general funds or other funds of the County for the benefit of the Truckee River Flood Management Project. ~~The County may sell, lease, transfer or donate property to the Authority as provided in this Section. If County offers to sell such property, it may be purchased by the Authority for the actual cost to the County, less depreciation and ordinary wear and tear, plus interest charges if debt financed.~~

3. In accordance with applicable statutes, County may convey to the Authority any property the County owns that is needed for the Truckee River Flood Management Project under the following terms and conditions:

a. The County may convey the minimum estate (e.g. easement or fee title) necessary under USACE regulations.

b. The County may convey the minimum estate without consideration or for consideration below its market value under NRS 277.053, or for its appraised value under NRS 277.050.

c. All acquisition and relocation costs shall be paid by the Authority.

¶8.01.B Real Property.

1. Unless otherwise agreed, conveyance of real property shall be by grant, bargain and sale deed with the same description as appears on the deed to the County. Transfer of water rights must be accompanied by a report of conveyance sufficient for recording with the State Engineer.

2. Property acquired by the County by bill of sale shall be conveyed with a bill of sale.

3. The cost of recording documents and obtaining title insurance shall be paid by the Authority.

4. County shall deliver to the Authority all files and documents relating to the acquisition of the properties conveyed under this paragraph, including, but not limited to, all appraisals, title reports and due diligence documents, purchase contracts, escrow instructions and records relating to the relocation of owners and tenants.

5. As properties were acquired and managed under the control of the same employees who will work for the Authority, the County conveys all property AS IS WHERE IS with all its faults and without any warranty except the warranties that run with a grant, bargain and sale deed.

¶8.01.C Personal Property.

1. Personal Property shall be delivered to the Authority together with a bill of sale or other document that effectively conveys title to the Authority.

2. County shall deliver all documents and files relating to the acquisition and management of such personal property, including instruction manuals, warranties and service or repair records.

3. The cost of transferring title shall be paid by the Authority.

4. Except for warranty of title, the County makes no representations or warranties regarding the condition or utility of any property conveyed hereunder.

¶8.01.D Contracts

1. Washoe County shall deliver all contracts it entered into for the benefit of the Truckee River Flood Management Project together with a validly executed assignment. The following provisions apply to each contract delivered and assigned.

2. If requested, County shall provide an estoppel certificate or other document indicating whether or not there is a breach, default, or dispute as to the performance of the contract by any party and to what extent payment or future performance is due.

3. The Authority shall be responsible for obtaining acknowledgement of the assignment of the contract and a novation, discharge or release from the counterparty discharging the County from any further obligations under the contract. If the contract is for the purchase or sale of goods, and counterparty will not consummate the sale or purchase under the original terms, the County shall complete the contract with funds being provided to or by the Authority. Otherwise, if a counterparty will not release or discharge the County, the Authority shall terminate the contract.

4. The County shall provide copies of all files and documents relating to the formation and performance of the contract.

¶8.01.E Funds

The County shall pay to the Authority the Truckee River Flood Management Infrastructure Fund Flood Project Net Proceeds and any funds held by the County for the benefit of the Truckee River Flood Management Project existing at the time of the request.

¶8.01.F Books, Records, Documents.

As requested from time to time by the Authority, the County shall make available for inspection and copying by the Authority all books, records and documents generated by the County in its administrative role under the 2005 Cooperative Agreement. This obligation shall survive the termination of this Agreement with respect to books, records and documents generated prior to the date that the Authority becomes duly organized and begins keeping its own books and records.

§8.02 *County Employees*

¶8.02.A The Authority and County may enter into a written agreement with respect to County employees working for the Authority. If such an agreement is entered into, the provisions of ¶8.02.B and ¶8.02.C, and ¶8.02.E shall be automatically terminated without requiring an amendment to this Agreement. Pending such an agreement, the provisions of ¶8.02.B and ¶8.02.C and ¶8.02.E shall be binding on the Authority and the County.

¶8.02.B Status of Executive Director.

County agrees that at the pleasure of the Authority, the Executive Director shall be administratively attached to the Washoe County Manager's Office for purposes of payroll and benefits, shall be accorded health and retirement benefits equal to that of a department head in the County but otherwise is not an agent of, under the control of, and owes no duties or loyalty to the County except as provided herein or in a written agreement between the Board and the County.

¶8.02.C Employees. Washoe County hereby agrees:

1. That all existing County employees who go to work for the Authority shall remain as County employees without any interruption in salary, seniority, benefits or rights under any collective bargaining agreements applicable to them.

2. That new employees who work for the Authority shall also be hired as County employees.

3. That with respect to employees of Washoe County:

a. The Board shall approve job descriptions and submit them to the County for inclusion in the County's job evaluation, salary administration and collective bargaining systems under the discretion and control of the Board of County Commissioners, who shall promptly act on the job descriptions.

b. Employees are subject to all of the ordinances, regulations, rules, policies and collective bargaining agreements and enjoy all the benefits, transfer and seniority rights as all other county employees as if the Authority were a department of Washoe County.

c. Employees of the Authority are not agents of and have no authority to bind the County.

d. The Executive Director shall have powers and responsibilities equal to those of a department head of Washoe County with respect to all aspects of employment. All actions of the Board and the Executive Director shall be governed by and subject to the County's ordinances, regulations, policies, procedures and collective bargaining agreements.

e. The County shall provide industrial insurance as required by Nevada law.

f. The Authority shall provide for fidelity bond coverage and shall have employees included in its general liability, property, and auto insurance coverages.

g. The indemnifications contained in ¶ 7.02.A (Washoe County indemnifies the Authority) and ¶7.02.B (the Authority indemnifies Washoe County) include acts, errors or omissions of the indemnifying party in the performance of employment activities.

¶8.02.C The Authority shall reimburse County for all payroll, benefits and costs of administering this section plus an administrative fee to be agreed upon in a written agreement, but in absence of such an agreement, the administrative fee shall be a rate established by County but not to exceed 5% of the monthly amount remitted.

§8.03 *Delegation of Powers*

County agrees and acknowledges that action by the Board, as described in this Agreement, is all that is required for the Authority to exercise the functions conferred and powers delegated in §3.02 of this Agreement, and that approval by the Board of County Commissioners is not required for the completion or exercise of any such function or power.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 9 RIGHTS AND OBLIGATIONS OF CITY OF RENO

§9.01 *Conveyance of Property Needed for Flood Project*

¶9.01.A In accordance with applicable statutes, Reno may convey to the Authority any property Reno owns that is needed for the Truckee River Flood Management Project under the following terms and conditions:

1. Reno may convey the minimum estate (e.g. easement or fee title) necessary.
2. Reno may convey the minimum estate without consideration or for consideration below its market value under NRS 277.053, or for its appraised value under NRS 277.050.
- 3 All acquisition and relocation costs shall be paid by the Authority.

§9.02 *Contracts with Washoe County*

Reno has entered into agreements with Washoe County for TRAction projects or otherwise with respect to the Truckee River Flood Management Project. Reno hereby consents to the assignment of all such contracts to the Authority and agrees to a novation of all such contracts substituting the Authority for Washoe County.

§9.03 *NPDES Interlocal Agreement Not Superseded.*

The creation of the Authority does not in any way supersede prior agreements and/or obligations of the duties and responsibilities of Reno, Sparks and Washoe related to the National Pollutant Discharge Elimination System (NPDES) Permit or the amended interlocal agreement with Reno, Sparks and Washoe dated June 22, 2004 to manage the NPDES Permit and the watershed with regard to water quality. The Authority will obtain input from the Stormwater Permit Coordinating Committee with regard to a flood management facilities plans' affect on water quality.

§9.04 ***TMWRF Agreement not superseded***

The creation of the Authority does not in any way supersede prior agreements and/or obligations of Reno and Sparks or permits associated therewith regarding the Truckee Meadows Water Reclamation Facility.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 10 RIGHTS AND OBLIGATIONS OF CITY OF SPARKS

§10.01 Conveyance of Property needed for Flood Project

¶10.01.A In accordance with applicable statutes, Sparks may convey to the Authority any property Sparks owns that is needed for the Truckee River Flood Management Project under the following terms and conditions:

1. Sparks may convey the minimum estate (e.g. easement or fee title) necessary under USACE regulations.
2. Sparks may convey the minimum estate without consideration or for consideration below its market value under NRS 277.053, or for its appraised value under NRS 277.050.
- 3 All acquisition and relocation costs shall be paid by the Authority.

§10.02 Contracts with Washoe County

Sparks has entered into agreements with Washoe County for TRAction projects or otherwise with respect to the Truckee River Flood Management Project. Sparks hereby consents to the assignment of all such contracts to the Authority and agrees to a novation of all such contracts substituting the Authority for Washoe County.

§10.03 NPDES Interlocal Agreement Not Superseded.

The creation of the Authority does not in any way supersede prior agreements and/or obligations of the duties and responsibilities of Reno, Sparks and Washoe related to the National Pollutant Discharge Elimination System (NPDES) Permit or the amended interlocal agreement with Reno, Sparks and Washoe dated June 22, 2004 to manage the NPDES Permit and the watershed with regard to water quality. The Authority will obtain input from the Stormwater Permit Coordinating Committee with regard to a flood management facilities plans' affect on water quality.

§10.04 TMWRF Agreement not superseded

The creation of the Authority does not in any way supersede prior agreements and/or obligations of Reno and Sparks or permits associated therewith regarding the Truckee Meadows Water Reclamation Facility.

§10.05 *Rescission of River Flood Protection Rates; Construction and operation of the North Truckee Drain Project.*

¶10.05.A Definitions. For purposes of this section 10.05, the following words have the following meanings:

North Truckee Drain Relocation Project (“NTD Project”) means a project to relocate the terminus of the North Truckee Drain in Sparks, Nevada, from its existing confluence with the Truckee River near the Truckee Meadows Water Reclamation Facility (TMWRF) to a point approximately 4,500 feet downstream where the river is adjacent to the railroad tracks and enters the East Truckee River Canyon. For purposes of this agreement, the project includes construction of conveyance facilities (concrete lined channels and box culverts etc) beginning on the North side of Interstate 80, near Lillard Street, running underneath Interstate 80 and thence easterly as depicted on Page 44 of the Living River Plan, Version 2.0, dated February 2010 and as the project description may be changed from time to time.

NTD Assets / North Truckee Drain Relocation Project Assets means all real and personal property acquired by the City of Sparks in connection with the planning and design of the North Truckee Drain Relocation Project, including, but not limited to (i) all real property including all improvements, fixtures, and appurtenances and interests in real property, including water rights, if any were conveyed to Sparks; (ii) all design documents including drawings, plans specifications, surveys, studies, and copies of all requests for proposal and responses and records relating to entering into contracts for the design and construction of the Project; (iii) all soils and environmental reports, all property inspection or condition reports; (iv) all contracts and contract rights including assignment of all contracts and all performance bonds, payment bonds, letters of credit or cash deposits or other security held as security for contracts, all unexpired warranties and warranty rights; (v) all construction property including all facilities and improvements constructed, all building materials, and supplies including orders, warehouse receipts, bills of lading or other similar documents for such materials and supplies; (vi) all general intangibles; and (vii) all records relating to the acquisition of property, design and construction of facilities including copies of all acquisition due diligence and escrow and relocation records.

Rate Resolution means a resolution enacted by the Authority Board to impose fees, rates and charges as contemplated by §6.01 of this Agreement.

Rescinding Ordinance means an ordinance to be adopted by Sparks rescinding the River Flood Protection Rate.

River Flood Protection Rate means a fee imposed on residences and commercial entities under Sparks Municipal Code 13.090.020 and 13.090.030 for the purpose of providing financing for the North Truckee River Drain Relocation Project. The fee was imposed by ordinance 2390 and 2391 in February of 2008, and has been collected as a part of the sewer fees collected from Sparks residents.

¶10.05.B Recitals

1. The North Truckee Drain Project is an approved part of the Truckee River Flood Management Project, and has been approved as a “TRAction Project” to be started before an agreement is entered into with USACE for cost sharing and construction of the overall Truckee River Flood Management Project. County has obtained “Section 104” authorization from the USACE that, subject to various conditions, the costs advanced for the design and construction of the NTD Project may qualify for possible credit under a potential Project Partnership Agreement.

2. As a joint development effort, County and Sparks entered in to an Interlocal Agreement in July of 2007 whereunder Sparks agreed to conduct feasibility study and rough design of the NTD Project, and County agreed to pay \$780,000 to reimburse Sparks. That agreement has been funded and completed.

3. In 2008, Sparks implemented the River Flood Protection Rate for the purpose of, among other things, financing the design and construction of the NTD Project. The design of the NTD Project is nearly completed and Sparks is prepared to issue bonds secured by the revenues of the River Flood Protection Rate to construct the NTD Project.

4. The NTD Project provides a regional benefit and can be built by the Authority and financed with regional rates and fees to be imposed and collected under the 2010 Cooperative Agreement, thus spreading the cost of the NTD Project to a wider base of persons who will be benefitted by it. Thus, in furtherance of the long term joint development effort, when the Authority imposes fees, rates and charges under §6.01 of this Agreement, Sparks desires to have the Authority take over and complete the financing and construction of the NTD Project, provided that Sparks receives assurances that the project will be promptly built.

5. As authorized by the Interlocal Cooperation Act (NRS 277.080 – 277.180), the parties desire to enter into this joint development agreement under NRS 277.180 to set forth the purposes, powers, rights, objectives and responsibilities of the parties in order to complete the design, construction, operation and maintenance of the NTD Project.

6. Under NRS 268.059 through NRS 268.063, Sparks may enter into joint development and cooperative agreements under NRS Chapter 277 to transfer and develop public property (e.g. the NTD Assets) for a public purpose without complying with normal requirements for appraisals and advertising for public bids. Under NRS 354.626 (2) (b) the Authority may enter into a binding long term cooperative agreement authorized under NRS Chapter 277 pending the appropriation of funds.

NOW THEREFORE, in consideration of and exchange for the mutual covenants and benefits contained herein, the parties agree as follows.

¶10.05.C Design of NTD Project and acquisition of land.

1. Pursuant to the “Interlocal Agreement (North Truckee Drain Design Project)” between the Authority and Sparks, Sparks shall complete the design of the NTD Project and prepare construction bid documents.

2. Sparks shall, to the extent funds are available under the River Flood Protection Rate, acquire all land and easements necessary to construct the NTD Project and shall relocate all owners and tenants as required by NRS Chapter 342.

¶10.05.D Rescission of River Flood Protection Rates.

1. Sparks and the Authority agree to cause the rescission of the River Flood Protection Rate as follows.

2. In preparing the rate design for the fees rates and charges to be established under §6.01 of this Agreement, Authority staff shall include a separate line item for the capital cost of completing the NTD Project, and shall include that cost in the fees, rates and charges.

3. Subject to the time requirements in ¶10.05.E, the Authority shall in its discretion fix a date to adopt the Rate Resolution enacting the fees, rates and charges. Sparks shall prepare the Rescission Ordinance rescinding the River Flood Protection Rate, and the parties shall coordinate the scheduling of first and second readings of the Rescission Ordinance such that the River Flood Protection Rate shall be rescinded before the effective date of the Rate Resolution.

4. The Authority shall promptly seek and diligently pursue judicial confirmation of the Rate Resolution once it and the Rescission Ordinance are enacted.

¶10.05.E Failure to enact Rate Resolution within 180 days.

If the Authority fails to enact the Rate Resolution within 180 days from the latest of the following dates, Sparks shall have the option to take over the NTD Project as provided in ¶10.05.H:

- i. The date that Sparks enacts those changes to its Development Code as provided in ¶4.02.B.2 of this Agreement; or
- ii. If the Authority is enjoined by a court from enacting the Rate Resolution, then the date that the injunction is lifted and the Authority is allowed to proceed with the Rate Resolution; or

- iii. If the Authority Board in its legislative discretion decides to delay enacting the Rate Resolution for any reason other than the failure of Reno or Washoe County to enact changes in their Development Codes in accordance with ¶4.02.B.2 above, then the date that the Authority Board decides to proceed with the Rate Resolution.

¶10.05.F Conveyance of NTD Assets.

1. When the fees, rates and charges have been judicially confirmed and the Authority is ready to issue Debt Instruments to finance the construction of the NTD Project, in consideration of the Authority's agreement to complete construction of the NTD Project, Sparks shall convey to the Authority all of the NTD Assets in Sparks' possession.

2. The conveyance to the Authority is AS IS without express or implied warranty, except warranty of title.

3. All funds transferred to the Authority by Sparks from the River Protection Rate shall be used exclusively for the NTD Project, and the Authority shall provide an accounting to Sparks.

¶10.05.G Construction, operation and maintenance of the NTD Project.

1. The Authority shall construct, own, operate and maintain the NTD Project when Sparks has (i) completed the design of the project, has prepared contract bid documents satisfactory to the Authority to use in soliciting bids in accordance with applicable law, (ii) acquired all the necessary land under ¶10.05.C above, and (iii) conveyed the NTD Assets to the Authority. The NTD Project may be constructed in phases consistent with available funding. ~~The Authority agrees to give all phases funding priority over other construction projects unless another funding priority is approved by the Board and the two Directors from Sparks vote for the approval of the different funding priority.~~

2. If the Authority fails to enter into a binding contract with the USACE or one or more contractors to build the NTD Project within 365 days from the completion of all the conditions listed in ¶10.05.G.1 next above, Sparks shall have the option to take over the construction, operation and maintenance of the NTD Project as provided in ¶10.05.H below.

¶10.05.H Sparks' take over of NTD Project.

1. If the Authority fails to enact the fees, rates and charges within the time frame set out in ¶10.05.E, or fails to enter into a contract to build the NTD Project within the time frame set out in ¶10.05.G.2 above, Sparks shall have the option to take over the

NTD Project. Sparks must give written notice of its election to exercise the option within 180 days from such failure.

2. If Sparks timely gives notice of its election to take over the NTD Project, the Authority shall promptly:

- i. Convey all NTD Assets to Sparks without consideration;
- ii. Assign any and all contracts for construction and materials to Sparks; and
- iii. Take whatever actions allowed and authorized by any Debt Instrument issued by the Authority to cause an amount equal to the amount specified in ¶10.05.D.2 to be paid from the construction fund established pursuant to the Debt Instrument for the construction of the NTD Project as approved by Sparks.

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 11 (RESERVED)

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INTERLOCAL COOPERATIVE AGREEMENT
(Truckee River Flood Management Project)

Article 12 GENERAL TERMS

§12.01 Term of Agreement

¶12.01.A Commencement. When this Agreement has been duly approved and executed by all the parties, and approved by the Attorney General of Nevada under NRS 277.140, it becomes effective as of the date indicated above.

¶12.01.B Duration. Unless earlier terminated by agreement of the parties, this Agreement shall be perpetual.

§12.02 Termination of Agreement

¶12.02.A This Agreement may be partially or completely terminated only by an agreement of the parties which must be approved as provided in ¶3.05.B.

¶12.02.B A partial termination may occur if it does not affect the ability of the Authority to completely honor all of its obligations hereunder. Otherwise, the Authority must be dissolved under §3.10 above.

§12.03 Default, Notice and Right to Cure, Remedies.

¶12.03.A Default.

A default occurs when (i) a party repudiates, breaches or fails to perform any obligation, term or provision in this Agreement; (ii) an event required to occur does not occur by the time required due to the lack of diligence or fault of a party; (iii) any representation of a material fact expressed herein was false at the time it was made, or, if a continuing representation, becomes false as a result of a subsequent event or occurrence; (iv) any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence; (v) a party violates any law material and relevant to this Agreement; or (vi) any event otherwise described in this Agreement as a breach or default.

¶12.03.B. Notice and Right to Cure.

Unless otherwise specified in this Agreement, in the event of the default, any non-defaulting party shall provide written notice of such default and the specific action required to cure such default and the defaulting party shall have thirty (30) days from the date that the notice is deemed given to cure the default.

¶12.03.C Remedies.

1. If the event of a default is suffered or caused by any party and not cured within the period of time specified, any non-defaulting party may, subject to any specific provision regarding remedies herein, (i) suspend any counter-performance due hereunder until the default is cured; (ii) bring an action for damages or equitable relief including, without limitation (a) an action for specific performance of the defaulting party's obligations hereunder, (b) the appointment of a receiver to take possession of Gross Revenues and apply them consistent with this Agreement, and/or (c) the partial or complete termination of this Agreement; or (iii) pursue any other remedy specifically provided in this Agreement.

2. All remedies stated in this Agreement are cumulative with each other and with any remedy afforded in law or equity. The election of any remedy does not constitute a waiver of any other remedy.

§12.04 *Waivers.*

Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future.

§12.05 *Representations and Warranties.*

Each Member represents and warrants to each other and to the Authority that (i) entering into this Agreement does not violate any contract, court order, administrative order or other undertaking binding on such party; (ii) it has complete authority to enter into this Agreement without obtaining any court order or permission or agreement of another party; (iii) there are no suits, other proceedings or investigations pending or threatened against it that it reasonably believes would impair its delegation of powers hereunder or its ability to perform its duties and obligations hereunder; and (iv) that the Member has all the powers delegated to the Authority hereunder.

§12.06 *General covenants of all parties.*

¶12.06.A Each party covenants to all of the other parties as follows.

¶12.06.B Ongoing disclosures

1. To promptly notify the other party of any facts that would cause any of the representations contained in the Agreement to be untrue during the term of this Agreement.

2. To promptly notify the other party of any facts or circumstance that would impair the obligated party's ability to perform its obligations hereunder.

¶12.06.D Compliance with law. To comply with all applicable ordinances, statutes, regulations and other laws with respect to its general operations and the performance of all obligations and duties under this Agreement

§12.07 *Assignment and Delegation.*

Except as otherwise specifically provided elsewhere in this Agreement, no party may assign any right or delegate any obligation under this Agreement without the written consent of all the other parties obtained in advance of the assignment or delegation. Consent is subject to the sole and absolute discretion of the consenting party.

§12.08 *Binding Effect; No Third Party Beneficiary.*

This Agreement shall be binding on and runs to the benefit of the parties, their respective successors and any assignees or delegates if the assignment or delegation is permitted. Unless otherwise specifically identified in this Agreement, there are no third party beneficiaries intended by this Agreement and no third parties have any standing to enforce any of the provisions of this Agreement.

§12.09 *Standards for Approvals.*

¶12.09.A Unless otherwise specified (such as with the words "sole discretion") wherever this Agreement requires the approval of a party, or any of a party's officers, agents or employees, such approval shall not be unreasonably withheld, delayed or conditioned.

¶12.09.B The governing bodies of the Members and the Authority are governmental bodies whose decisions are legislative functions that may be subject to public hearings and input, and, except as otherwise provided herein, shall have sole and absolute discretion to approve or disapprove any matter submitted to them provided, however, that decisions are not procured by fraud or bribery, or, with respect to the County, are arbitrary, capricious or an abuse of discretion.

§12.10 *Notices; When Deemed Sufficiently Given*

¶12.10.A Unless otherwise provided herein, formal notices, demands and communications between the parties must be in writing and must be sent via certified or registered mail, return receipt requested, or by overnight courier to the addresses stated in Article 1 above, or to any address or number subsequently communicated to the sending party in writing.

¶12.10.B In addition, notices shall be given to the following parties, although failure to do so shall not make the service under ¶11.10.A defective:

For County:
and Authority

Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520-3083
Attn: Civil Division

For Reno:

Reno City Attorney
One East First Street, Third Floor
Reno, Nevada 89501

For Sparks:

Sparks City Attorney.
431 Prater Way
Sparks, Nevada 89436

¶12.10.B If notice is sent by registered or certified mail to the correct address, postage prepaid, it will be deemed sufficiently given when actually received by the addressee or three business days after it is received by the U.S. Post Office as indicated on the receipt, whichever is earlier.

¶12.10.C If notice is sent by courier, or overnight delivery service (e.g., Federal Express, UPS Overnight, U.S. Postal Priority Mail), it will be deemed sufficiently given when delivered to the address as indicated in the records of the courier or service.

§12.11 Further Acts and Assurances.

¶12.11.A Each party agrees to take all necessary action to enter into, execute and deliver any and all written documents necessary to carry out the terms of this Agreement, and for the development of the Flood Management Project in accordance with the terms of this Agreement.

§12.12 Attorney's Fees & Costs

If any party hereto institutes any action or proceeding (including arbitration, if authorized) against the other or others arising out of or relating to this Agreement, attorney's fees and costs may be awarded to the prevailing party, as determined by or otherwise allocated at the discretion of the Court (or arbitrator).

§12.13 Timing Provisions.

Time is of the essence in the performance of this Agreement. Unless otherwise specified, the term "days" means calendar days. If a deadline falls on a weekend or holiday then performance is due on the first business day of the recipient thereafter. Unless otherwise specified, performance is due by the later of 5 p.m. Reno, Nevada time or close of business of the recipient on the day it is due.

§12.14 *Applicable Law*

This Agreement shall be construed under and governed by the laws of the State of Nevada.

§12.15 *Non-Liability of Individual Officers or Employees of Parties*

No official or employee of any party to this Agreement shall be personally liable to any other party or any successor in interest, in the event of any default or breach by the party or for any amount which may become due to any other party or its successor, or as a result of any representation (except any representation regarding the authority to execute this Agreement), warranty or obligation under the terms of this Agreement.

§12.16 *Enforceability; Severability; No Merger with Deed.*

¶12.16.A Each term and provision of this Agreement (including the conferring of functions and delegation of powers) shall be valid and shall be enforced to the extent permitted by law, taking into account permissible waivers or provisions which may be upon agreement of the parties.

¶12.16.B If any term or provision of this Agreement or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this Agreement. In any event, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

¶12.16.C To prevent windfall or unintended consideration, if any term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter-performance, condition, or corresponding consideration.

¶12.16.D This Agreement does not merge with any deed or other conveyance of any property.

§12.17 *Construction of Agreement.*

¶12.17.A Titles and headlines of this agreement are intended for editorial convenience and are not to be construed as a part of this agreement.

¶12.17.B The word “include” or “including” is not intended as a limitation and shall be construed to include the words “but not limited to.”

¶12.17.C Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the

context, the plural.

¶12.17.D The Parties hereto were each advised by counsel in drafting and negotiating this agreement, and each Party contributed to its contents. No presumptions against or in favor of any party are appropriate based on who drafted this Agreement or any provision herein.

¶12.17.E Any reference to another document (statute, resolution, plan, contract etc) includes the reference to all amendments thereto.

¶12.17.F Any reference to a numbered provision in this Agreement or any other reference which is incorrect shall be deemed to refer to the appropriate provision.

§12.18 Modifications and Amendments.

This agreement may be modified or amended only as approved in ¶3.05.B.

§12.19 Authority to Execute and Implement.

Each person who signs this Agreement below warrants and represents that he or she has the actual authority to bind the principal for which he or she signs and that his or her signature has the effect of binding the principal.

§12.20 Entire Agreement; Attachments; Counterparts; Recording

¶12.20.A This Agreement (together with attachments and documents incorporated by reference) integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

¶12.20.B All attachments hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

¶12.20.C This Agreement may be executed in counterparts and is deemed duly executed when original signature pages of all parties are executed and delivered.

¶12.20.D This Agreement shall be recorded in the official records of Washoe County and with the Nevada Secretary of State pursuant to NRS 277.140.

§12.21 Termination of 2005 Cooperative Agreement

Each party to this Agreement hereby discharges and releases each other party from all duties and obligations under the 2005 Cooperative Agreement arising after the effective date of this Agreement and consents to the termination of the 2005 Cooperative Agreement with the intent that it be replaced with this Agreement.

//////////////////////////////////////END OF AGREEMENT//////////////////////////////////////

Interlocal Cooperative Agreement
(Truckee River Flood Management Project)
Counterpart Signature Page

APPROVED
Per NRS 277.140

CATHERINE CORTEZ MASTO
Attorney General

By _____ Date _____

Interlocal Cooperative Agreement
(Truckee River Flood Management Project)
Counterpart Signature Page

WASHOE COUNTY

A political subdivision of the State of Nevada

By _____ Date _____
David E. Humke, Chairman
Board of County Commissioners

Attest:

By _____ Date _____
Amy Harvey, County Clerk

STATE OF NEVADA)
) Acknowledgement in Representative Capacity
COUNTY OF WASHOE) (NRS 240.1665)

This Instrument was acknowledged before me on _____
by DAVID E. HUMKE as Chairman of the Board of County Commissioners of Washoe
County, Nevada

Notary Public

STATE OF NEVADA)
) Acknowledgement in Representative Capacity
COUNTY OF WASHOE) (NRS 240.1665)

This Instrument was acknowledged before me on _____
by AMY HARVEY as County Clerk of Washoe County, Nevada

Notary Public

Approved as to form
RICHARD A. GAMMICK
District Attorney

By _____

Interlocal Cooperative Agreement
(Truckee River Flood Management Project)
Counterpart Signature Page

CITY OF RENO

A municipal corporation

By _____
Robert Cashell, Mayor

Date _____

Attest:

By _____
Lynette Jones, City Clerk

Date _____

STATE OF NEVADA)
)
COUNTY OF WASHOE)

Acknowledgement in Representative Capacity
(NRS 240.1665)

This Instrument was acknowledged before me on _____
by ROBERT CASHELL as Mayor and LYNETTE JONES as City Clerk of the City of
Reno, Nevada

Notary Public

Approved as to form
JOHN KADLIC
City Attorney

By _____

Interlocal Cooperative Agreement
(Truckee River Flood Management Project)
Counterpart Signature Page

CITY OF SPARKS
A municipal corporation

By _____
Geno Martini, Mayor

Date _____

Attest:

By _____
Linda Patterson, City Clerk

Date _____

STATE OF NEVADA)
) Acknowledgement in Representative Capacity
COUNTY OF WASHOE) (NRS 240.1665)

This Instrument was acknowledged before me on _____
by GENO MARTINI as Mayor and LINDA PATTERSON as City Clerk of the City of
Sparks, Nevada.

Notary Public

Approved as to form
CHESTER ADAMS
City Attorney

By _____

Interlocal Cooperative Agreement
(Truckee River Flood Management Project)
Counterpart Signature Page

TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY

By _____ Date _____
Chairman, Board of Directors

Attest:

By _____ Date _____

STATE OF NEVADA)
) Acknowledgement in Representative Capacity
COUNTY OF WASHOE) (NRS 240.1665)

This Instrument was acknowledged before me on _____
by _____
as _____
of the Truckee River Flood Management Authority.

Notary Public

STAFF REPORT

Agenda Item: J.9
Date: 12-08-2010

To: Mayor and City Council

Thru: Donna Dreska, City Manager

Subject:

Staff Report: Update, discussion and potential direction to staff regarding the Truckee River Flood Management Project and alternatives to forming a Joint Powers Authority.

From: John Hester, Assistant City Manager
John Flansberg, Public Works Director

Summary: This report provides information on a potential alternative to forming a Joint Powers Authority between the Cities of Reno and Sparks, and Washoe County contemplated for the purposes of managing and providing funding to complete the Truckee River Flood Project (Project). This report provides an interlocal agreement option that would use existing entities and government powers for planning, building projects, development review, collecting revenues, and for providing project management and agreements with the US Army Corps of Engineers (USACE).

Staff recommends Council pursue an interlocal agreement as outlined here for the Truckee River Flood Management Project as an alternative to a Joint Powers Authority.

Previous Council Action:

January 14, 2009: Council reviewed various potential governance models and directed that a Joint Powers Authority be pursued to complete the Project.

February 9, 2009 (Joint Meeting of the Cities of Reno, Sparks, and Washoe County): The Commissioners and Council members agreed to pursue a Joint Powers Authority as the governance structure to replace the Flood Project Coordinating Committee (FPCC).

December 16, 2009: Staff updated Council on the policy issues related to forming a Joint Powers Authority for the Truckee River Flood Management Project.

Background: In early 2009, as part of the region's efforts to plan and construct the Project, the governing bodies of Sparks, Reno, and Washoe County determined the best way to manage the Project was to enter into a Cooperative Agreement creating a Joint Powers Authority (JPA). Legislation was subsequently drafted and passed (SB 175) authorizing cities and counties to impose rates and collect fees to pay for a flood management project. Beginning in August of 2009 a series of meetings were conducted by the Flood Project Oversight Committee, including senior technical and legal staff members from each jurisdiction, bond counsel to the Flood Project, and City and County managers. The purpose of these meetings was to prepare a draft

cooperative agreement. Many key policy issues have been successfully negotiated with input from the Councils and Commissions. However, terms in the draft JPA agreement which allow for review of land use changes and future development proposals by the JPA have not been fully accepted. Also, with ever increasing fiscal pressures facing local governments there is a growing concern about the staff levels and resources needed for a new separate agency with some regulatory role and power. At the November 17, 2010 City Council meeting, staff was directed to identify potential options to the JPA to take full advantage of existing government staffs, resources and capabilities.

Discussion: Staff has reviewed the governance options identified in February 2009. Some options involved creation of a separate entity and others entailed using an interlocal agreement. All the options involving creation of a separate entity (General Improvement District, Flood Control District, and JPA) required legislative changes. Only the changes needed to create a JPA were approved by the 2009 Legislature. The interlocal agreement option would provide an alternative for completing the project. The parties to the interlocal agreement would be the Cities of Reno and Sparks, and Washoe County.

After reviewing the various options, staff recommends Council consider use of an interlocal agreement to implement the Flood Project. The agreement is summarized in the table below.

Summary of Recommended Flood Project Interlocal Agreement

With or Without Federal Funding			
Function	Local Responsibility (Independent)	Local Responsibility (Coordinate)	Regional Responsibility (Designated Lead Entity)
Plan Preparation and Amendment		●	
Marketing and Public Relations		●	
Review of Development Proposals	●		
Design and Construction of Flood Projects	●		
Rates and Collection of Revenues		●	●
With Federal Funding			
NEPA Process			●
Project Partnership Agreement with USACE			●
Federal Funding and Application(s)			●

● = Responsible entity

Each of the functions that would be addressed in the interlocal agreement and the responsible party or parties is discussed below. These functions have been divided into two groups. The first are the functions that would be required if Federal funding for the project is not obtained (Without Federal Funding).

1. Plan Preparation and Amendment – This includes planning models, plan preparation and plan amendment tasks. These tasks would be undertaken by coordinating the flood management planning efforts of each jurisdiction at the staff level and by each entity adopting the complementary plans. In fact, all three jurisdictions have successfully done this as a result of a court settlement requiring “concurrency management” and adoption of the prerequisite plans. Each jurisdiction has adopted a flood management facility plan that is part of their respective master plans. The plan for Reno is entitled City of Reno and Washoe County TMSA/FSA Water, Wastewater, and Flood Management Facility Plan. In Reno it is an appendix to Public Services, Facilities and Infrastructure Plan which is part of the City Master Plan. This is a joint City/County facility plan that was funded with regional water planning revenues, prepared by a single consultant team and covers both the incorporated City of Reno and unincorporated Washoe County. It has also been adopted by the County Commission and found in conformance with the Truckee Meadows Regional Plan. The City of Sparks has a similar plan that was prepared by a different consultant. More specifically, there is already agreement on the list of projects that comprise the Truckee River Flood Management Project (*Living River Plan, Project Elements and Maps*, as amended). And, an alternative project list based on available local funds could be formulated assuming no Federal funding is received. In addition, the entities could coordinate with each other to maintain and update any computer models used to prepare these plans. Finally, any future amendments could be developed and approved in the same manner. This arrangement could easily be included in an interlocal agreement.
2. Marketing and Public Relations – Each entity could instruct existing community relations staff to coordinate efforts to create a coordinated public information and marketing program. These staff have done this before on a number of occasions. This arrangement could also be included in an interlocal agreement.
3. Development Review – Each entity would maintain development review authority and require development projects to provide facilities consistent with the adopted plan for that entity. The USACE also requires that non-Federal interests adopt such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the flood project. Consistent local development codes can be adopted through staff level coordination. Again, this was achieved as a result of the court settlement agreement mentioned above (i.e., common development edge matching and buffering requirements were adopted by all jurisdictions). Should a development outside of the scope of development assumed in preparing the plan be proposed, the impact of that development would be modeled and any plan amendment required would have to be processed as outlined in the interlocal agreement (See 1, above). If alternative facilities were proposed, a similar

modeling and plan amendment process would be required. This arrangement could also be included in an interlocal agreement.

4. Design and Construction of Flood Projects - This would be coordinated through the various Public Works Departments consistent with adopted plans and available funding. This arrangement would also be included in an interlocal agreement.
5. Set Rates and Collect Revenues - A regional rate would be established and approved by Reno, Washoe County and Sparks in accordance with the rate study and the County would implement and collect the rates, tolls and charges, and issue bonds backed by the pledged revenues from the rates, tolls and charges. The City of Sparks has already established a rate for construction of the North Truckee Drain realignment and this would need to be addressed in an interlocal agreement as it would if a joint powers authority were created. In order for each entity not have to individually establish and approve rates and charges SB 175 could be amended so 1 governmental entity can set rates and charges for all 3 entities. This can likely be accomplished by amending the definition of "Flood Management Authority."

The remaining three functions are those required to seek and utilize Federal funding (With Federal Funding).

1. National Environmental Protection Act (NEPA) Process - Federal requirements necessitate that the NEPA analysis be conducted for the entire project as a whole, instead of each component individually or in segments. While there has been some provision made for certain Truckee River Early Action Projects to conduct individual NEPA analysis, these have met stringent requirements and were analyzed for suitability with this provision before the projects were pursued individually. The lead entity to take the coordinated plans through the NEPA process can be identified and included in the interlocal agreement. Staff suggests that the City Council formally request that the County Commission accept the designation as the lead entity for this task as the projects are in both incorporated and unincorporated areas, not in any single city.
2. Project Partnership Agreement (PPA) with USACE - If federal funding *is* provided, then one Project Sponsor is required to enter into a PPA with the USACE. This should be the same party that completes the National Environmental Policy Act process for the entire Project.
3. Federal Funding and Application(s) – This should be the County, consistent with the NEPA and PPA lead entity designation.

Should Council agree with the staff recommendation, the Reno delegates to the FPCC and staff should present this option at the January 14, 2011 FPCC meeting.

Financial Implications¹: Both the JPA and interlocal agreement options provide least cost alternatives for financing the Project by enabling one entity to bond for the region. However, an interlocal agreement which establishes a County bond bank may provide additional advantages. 1) A new entity (JPA) without proven history of financial strength may enter the bond market at a higher cost than would an existing entity with a good debt history. (Note: Establishing rates separately could result in an inferior bonding case). 2) A JPA can be less cost effective than utilizing existing organization(s) when it has to build administrative, operations, and maintenance organizational structures to carry out its functions.

Legal Implications: The interlocal agreement would establish, policies, design standards, financing methods, the process for establishing rates and charges, liability, indemnity, ownership and management of the flood facilities. Liability would depend on ownership and the agreement of the parties.

Since the entities cannot delegate the establishment and setting of the rates and charges, a regional rate would be established and approved by Reno, Washoe County and Sparks in accordance with the rate study. The County would implement and collect the rates, tolls and charges, and issue bonds backed by the pledged revenues from the rates, tolls and charges. This arrangement would be established by interlocal agreement where Reno, Washoe County and Sparks designate Washoe County as the lead entity to implement, collect and manage the rates, tolls and charges and bond. Full development of this type of arrangement still needs to be vetted, but it is possible.

In order for each entity to not have to individually establish and approve rates and charges SB 175 could be amended so 1 governmental entity can set rates and charges for all 3 entities. This can likely be accomplished by amending the definition of "Flood Management Authority."

A regulatory purpose is needed to support the establishment of rates and charges.

The County would issue bonds and the revenues from the rates and charges would be pledged to repay the bonds. The rates and charges would have to be of sufficient amount to pay for the debt service. Bond Counsel has indicated that how the financing would be implemented would depend on how the interlocal is fashioned. Further, the 1/8 cents sales tax must be managed by the County in accordance with State Law and per County Ordinance.

The ultimate development review authority remains with the governmental entity in whose jurisdiction the project is being developed.

With regard to the PPA with the USACE, one non-Federal sponsor to work with the USACE would have to be identified. The local "Project Sponsor" must be a legally constituted public body with full authority and capability to perform the terms of the agreement with the USACE. A local sponsor may be a County, City or other political subpart of a State. For projects that

¹ Portions of the financial analysis summary are taken from: "Draft Report for Truckee River Flood Funding Area Boundaries and Rate Study", FCS and Ch2M Hill, 2008.

have multiple non-Federal interests, the preferred option of the USACE is for one non-Federal sponsor to be the designated lead for executing the agreement with the USACE. Sub-agreements with all non-Federal interests would be needed. The USACE also requires that the non-Federal interests adopt regulation as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Flood Project.

Further, with regard to NEPA, as discussed above, one lead entity would need to take the lead to spearhead the process.

Recommendation: Staff recommends Council pursue an interlocal agreement as outlined in this staff report for the Truckee River Flood Management Project as an alternative to a Joint Powers Authority.

Proposed Motion: I move to approve the staff recommendation and direct that FPCC delegates and staff take the necessary steps to coordinate with Sparks and Washoe County to implement the interlocal agreement.