



**FLOOD PROJECT COORDINATING COMMITTEE  
FINANCE SUBCOMMITTEE**

**NOTICE OF MEETING**  
**AND**  
**AGENDA**

**THURSDAY– SEPTEMBER 9, 2010 – 11 A.M.**

Washoe County Complex  
Caucus Room, 2nd Floor of Building A  
1001 East Ninth Street, Reno, Nevada

**Finance Subcommittee Members**

Ron Smith, Chair  
Dan Gustin, Vice Chair  
David Humke

Katy Simon  
Shaun Carey  
Donna Dreska

**Pursuant to NRS 241.020, this notice has been posted at the following locations:**

Washoe County Administration, 1001 East Ninth Street, Reno, Nevada.

Sparks City Hall - City Clerk, 431 Prater Way, Sparks, Nevada.

Reno City Hall - City Clerk, One E. First St., Reno, Nevada.

Truckee River Flood Project Office, 9390 Gateway Drive, Reno, Nevada

Truckee River Flood Project website: <http://truckeeflood.us> (Click Committees, then Meeting Agendas, then scroll down to Finance Subcommittee), **OR** go to [http://truckeeflood.us/140/meeting\\_agendas.html](http://truckeeflood.us/140/meeting_agendas.html)

**PUBLIC COMMENT:** In order to conduct orderly, efficient, effective and dignified meetings that promote a governmental purpose with a governmental process, public comment may address any agenda item or other public issue that the Committee has the authority to effectuate or exercise control over. Public comment on matters beyond the Committee's scope of authority is not relevant to the Committee's business, does not invoke a governmental process nor serve a governmental purpose, and is contrary to the effective, efficient and orderly business conducted by the Committee. Each person addressing the Committee shall fill out a request to speak form, step up to the microphone when called, give his/her name, and limit the time of his/her presentation to three (3) minutes. All public comment remarks shall be addressed to the Committee as a body, and not to any member thereof. No person, other than members of the Committee and the person having the floor, shall be permitted to enter into any discussion, either directly or through members of the Committee. No questions shall be asked of the Committee members, except through the presiding officer. The Committee reserves the right to determine during its meeting, through a vote of its members, whether to allow additional public comment, limited to one (1) minute per person, on specified individual items on the agenda.

**NOTES:** Items on the agenda may be considered in an order different than they appear on the agenda. Unless otherwise indicated by an asterisk ( \* ), all items on the agenda are action items upon which the Committee may act. The meeting facility is accessible to the disabled. Persons with disabilities who require special accommodations or assistance (e.g., sign language, interpreters or assisted listening devices) at the meeting should notify Flood Project staff at 850-7429, forty-eight (48) hours before the meeting.

1. **CALL TO ORDER AND ROLL CALL** – Determination of a Quorum
2. **\*ANNOUNCEMENTS**
3. **\*PUBLIC COMMENT** – For all items on or off the agenda, limited to 3 minutes per person
4. **MINUTES - Approve Provisional Minutes of Finance Subcommittee Meeting of August 12, 2010.**
5. **FINANCE SUBCOMMITTEE ITEMS**

**A. CARMEN GROUP / LOBBYIST UPDATE**

*Mimi Fujii-Strickler, Flood Project Supervisor, Truckee River Flood Project*

Update on lobbyists' activities. Possible action to accept the report and/or provide direction to staff on related lobbying matters.

**B. UPDATE ON THE UNR MEMORANDUM OF UNDERSTANDING**

*Naomi Duerr, Director, Truckee River Flood Project*

Report on the current status of the Memorandum of Understanding (MOU) being developed between the Flood Project partners and the University of Nevada, Reno. (UNR). Possible action to provide guidance to staff on completing development of the MOU.

**C. JPA UPDATE**

*Naomi Duerr, Director, Truckee River Flood Project*

Report on recent meetings, developments, proposals, and timelines regarding development of a new Cooperative Agreement to establish a Joint Powers Authority (JPA) for the Flood Project. Possible discussion and action to provide instructions to staff regarding the contents of the draft Cooperative Agreement regarding membership, governance, administration, and regulatory powers of the proposed Joint Powers Authority; the acquisition of land and the construction, ownership, operation and maintenance of flood facilities; the assessment and collection of rates and fees to pay for the project; the financing of the project; and the rights and obligations of parties to the Cooperative Agreement.

**D. AMENDMENT TO THE FCS GROUP INC. CONTRACT REGARDING ESTABLISHMENT OF FEES TO BE COLLECTED FOR FLOOD PROJECT - \$150,000**

*Naomi Duerr, Director, Truckee River Flood Project*

Discussion and possible action to approve an amendment to the current contract with FCS Group regarding provision of consulting services and preparation of reports to be used in establishing revenue requirements of, and the rates and fees to be collected for, the financing of the Flood Project; and if approved, forward to the Washoe County Board of County Commissioners for consent.

**E. PLANNING AND DESIGN AGREEMENT FOR THE TRACY POWER PLANT ECOSYSTEM RESTORATION TRACTION PROJECT IN AN AMOUNT NOT-TO-EXCEED \$250,000**

*Melissa Faigeles, Natural Resource Planner*

Discussion and possible action to: 1) approve the Tracy Restoration Project as a TRAction project, 2) approve an agreement with The Nature Conservancy in an amount not to exceed \$250,000 for project planning and design of the TRAction Project, and 3) if approved, forward the agreement to the Washoe County Board of County Commissioners for consent.

**F. APPROVAL OF PHASE II OF THE HYDROLOGIC MODEL CONTRACT WITH MANHARD ENGINEERING IN AN AMOUNT NOT TO EXCEED \$850,000**

*Paul Urban, Flood Project Manager, Truckee River Flood Project*

Discussion and possible action to approve a contract in an amount not-to-exceed \$850,000 with Manhard Engineering for development of Phase II of a Regional Hydrologic Model (application of the model to the entire watershed), and if approved, to forward the agreement to the Washoe County Board of County Commissioners for consent.

**G. MONTHLY REPORTS ON FLOOD PROJECT FINANCIAL STATUS AND FINANCIAL RELATED ACTIVITIES**

*Lisa Gianoli, Consultant, Truckee River Flood Project*

Update on monthly and year-to-date revenues and expenditures and related financial activities of the Truckee River Flood Project. Possible action to accept the report and/or provide direction to staff on related financial matters.

**6. COMMITTEE MEMBER COMMENTS, REQUESTS AND FUTURE AGENDA ITEMS**

Possible action to approve items for future agendas.

**7. ADJOURNMENT**



**TRUCKEE RIVER FLOOD PROJECT  
FINANCE SUBCOMMITTEE  
Thursday, August 12, 2010  
12:00 P.M.**

**DRAFT OF MINUTES**

**Finance Subcommittee Members**

Ron Smith, Chair	Katy Simon
Dan Gustin, Vice Chair	Shaun Carey
David Humke	Donna Dreska

- 1. CALL TO ORDER AND ROLL CALL – Determination of a Quorum** **12:04 p.m.**

The meeting was called to order by Ron Smith on Thursday, August 12, 2010 at the Washoe County Assessor’s Office Conference Room, 2<sup>nd</sup> Floor of Building D at 1001 E 9<sup>th</sup> Street, Reno, Nevada.

Neil Krutz was present for Shaun Carey; David Humke was not present.

Staff Present: Naomi Duerr, Director; Jay Aldean, Deputy Director; Paul Urban, Project Manager; Mimi Fujii-Strickler, Project Supervisor; Lisa Gianoli, Flood Project Consultant; Greg Salter, Deputy District Attorney; Danielle Henderson, Pat Winans, Lisa Diebler and Laura Bayer.
- 2. ANNOUNCEMENTS –** **12:05 p.m.**

Director Duerr announced that Wednesday, August 18, Colonel Leady would visit Reno for a tour. Director Duerr requested that members of the Finance Subcommittee attend a stakeholder lunch in support.
- 3. PUBLIC COMMENT – Limited to three minutes per person** **12:06 p.m.**

None.
- 4. MINUTES - Approve Provisional Minutes of Finance Subcommittee Meeting of June 10, 2010.**  
Dan Gustin motioned to approve the minutes, Donna Dreska seconded. The motion passed unanimously.

**5. FINANCE SUBCOMMITTEE ITEMS**

**A. CARMEN GROUP UPDATE**

**12:07 p.m.**

Lobbyist Mia O'Connell updated the group via telephone. O'Connell said the language for early construction of the North Truckee Drain Project is being worked on, in conjunction with meetings with Senator Reid's office to ensure the project is considered for funding in the bill. Director Duerr, the Flood Project team and O'Connell will conduct follow-up meetings in Washington regarding a policy initiative under the new administration to address Corps procedures and process. Staff has spent a significant amount of time visiting Corps staff in the district office. With the backing of the Secretary's office, O'Connell said the team is aiming for a Chief's Report from the Corps for next year.

Director Duerr further explained that the Corps' DC headquarter office is directing the Sacramento-based team to put a workplan together to achieve the goal for a signed Chief's Report for WRDA 2011.

**E. MONTHLY REPORTS ON FLOOD PROJECT FINANCIAL STATUS AND FINANCIAL RELATED ACTIVITIES**

**12:23 p.m.**

Lisa Gianoli provided the update on the operating fund as of the end of Fiscal Year 09/10 (June 30, 2010). Gianoli stated that in the report, the revenues are slightly under collected, but it's lacking one more month of sales tax, which results in the amount this month being 5% lower than this month last year. Of the last 38 months, 37 have been below projections. Gianoli went on to explain in greater detail the budget endings from one year, and the assumptions moving into the next fiscal year.

**Dan Gustin moved to accept the report, Donna Dreska seconded. The motion passed unanimously.**

**B. JPA UPDATE ON COOPERATIVE AGREEMENT**

**12:33 p.m.**

Director Duerr provided the update on the JPA, saying there is a tentative meeting set for the drafting team next Friday. In September, the JPA text will go to the stakeholders for public review, and in October it will be presented at the Joint Meeting – so far, everything is on schedule. District Attorney Greg Salter is currently working on the draft for the MOU with UNR that specifies a concept to acquire UNR land only if needed. The present challenge is that the University is not sure what it will do with the farm land. The MOU will have to be approved by the Board of Regents because it does involve the purchase or possible sale of land, but it is not yet listed on their agenda. Dan Gustin expressed a desire to resolve the issue by October 2010.

**Dan Gustin moved to accept the update, Katy Simon seconded. The motion passed unanimously.**

**C. STRUCTURAL ENGINEERS FOR HOME ELEVATION IN A TOTAL AMOUNT NOT-TO-EXCEED \$300,000** **12:46 p.m.**

Jay Aldean provided the update. The RFQ process is complete, having received 14 total statements of qualifications from local firms. Four firms were selected with a large local presence – Stantec Consulting Services, Inc., Wood Rodgers, Inc., Summit Engineering Corporation, and Tobey-Wade Consulting. Four draft contracts are complete with the most recent signature from Tobey-Wade. When this goes before the Board of County Commissioners, there isn't expected to be much review, rather small changes. Contracts are on-call contracts with individual tasks on each contract with a total not to exceed \$300,000 on all four.

**Dan Gustin motioned to accept the update, Donna Dreska seconded. The motion passed unanimously.**

**D. DESIGN AGREEMENT FOR THE VIRGINIA STREET BRIDGE TRACTION PROJECT**

Item removed from agenda, still in negotiations.

**6. COMMITTEE MEMBER COMMENTS, REQUESTS AND FUTURE AGENDA ITEMS** **12:53 p.m.**

Dan Gustin inquired about an ordinance for the general public entering the river at certain areas. Paul Urban said he would take a closer look at the potential issue and entrance to the river, analyzing bank stabilization and other elements that could affect the landscape and/or river if official access to the river is granted.

**7. ADJOURNMENT**

*The meeting adjourned at 12:58 p.m.*



## **FLOOD PROJECT COORDINATING COMMITTEE**

### **STAFF REPORT**

**MEETING DATE: September 10, 2010**

**DATE:** September 1, 2010

**TO:** Flood Project Coordinating Committee Members

**THROUGH:** Naomi Duerr, Director, Truckee River Flood Management Project, 850-7420 [nduerr@washoecounty.us](mailto:nduerr@washoecounty.us)

**FROM:** Mimi Fujii-Strickler, Flood Project Supervisor  
850-7431, [mfujii@washoecounty.us](mailto:mfujii@washoecounty.us)

**SUBJECT: Carmen Group Federal Lobbyist Monthly Report**

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### **SUMMARY**

The Carmen Group represents an integral part of the Flood Project's overall strategy to ensure that the Truckee River Flood Management Project receives priority attention by the Army Corps of Engineers' management. The Carmen Group has effectively provided federal lobbying services to the Flood Project for the last four years and promoted our project on a daily and weekly basis with the Corps of Engineers' Headquarters staff and the Assistant Secretary of the Army. It is through the Carmen Group's assistance that our local community retains control over the project formulation process so we can effectively build our preferred plan as well as maintain an equitable cost-sharing arrangement with the Corps.

**See attached Carmen Group Monthly Status Reports for July & August**

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### **PREVIOUS ACTION 2010**

**January 2010**      The Finance Subcommittee conducted a teleconference with Mia O'Connell of the Carmen Group during the Finance Subcommittee meeting.

**February 2010**      No Finance Subcommittee Meeting.

**March 2010**      The Finance Subcommittee conducted a teleconference with Mia O'Connell of the Carmen Group during the Finance Subcommittee meeting.

<b>April 2010</b>	No Finance Subcommittee Meeting.
<b>May 2010</b>	The Finance Subcommittee conducted a teleconference with Mia O'Connell of the Carmen Group during the Finance Subcommittee meeting.
<b>June 2010</b>	The Finance Subcommittee conducted a teleconference with Mia O'Connell of the Carmen Group during the Finance Subcommittee meeting.
<b>JULY 2010</b>	No Finance Meeting
<b>August 2010</b>	The Finance Subcommittee conducted a teleconference with Mia O'Connell of the Carmen Group during the Finance Subcommittee meeting.

**FISCAL IMPACT**

There is no identified fiscal impact for this agenda item.

**RECOMMENDATION**

It is recommended that the FPCC accept this report and provide any direction to the staff on the information presented herein.

**POSSIBLE MOTION**

Motion to accept the report and verbal update.

MFS:nsd



## Monthly Status Report

### Washoe County July 2010

During the month of July, your consultant was involved in, and advised on the following activities on behalf of Washoe County.

#### **Flood Project Issues – Early Corps Construction**

The consultant continued to work with Ms. Duerr, her staff and Senator Reid's staff to finalize proper language to allow for early construction by the Corps of the North Truckee Drain element of the project for inclusion along with key funding in the Corps FY 2011 Energy and Water Development Appropriations Bill. The draft language we came to directed the Corps to proceed with construction, while removing all procedural hurdles. While Senator Reid's staff submitted the language and the funding request for General Investigations and Construction funding, only the General Investigations funding was included in the bill for the project. The rationale given by the Committee was that no new start construction funding was included in the bill, even if it was included in the budget.

The consultant spoke with Senator Reid's staff to indicate that there would be other opportunities for construction funding to be included before the bill was finalized and that we would work with Committee staff to find the best path. Senator Reid's staff agreed to meet with the consultant and Committee staff.

#### **ASA-Policy Initiative - Community-Based Solutions – ASA and Headquarters Follow-up**

After the Washington visit by Ms. Duerr and Mr. Smith, the consultant continued to press both ASA's and Headquarter's offices to use the tenets of our Policy Initiative we developed to direct the field to expedite the Chief's Report so that it would be complete in 2011, in time for WRDA and to use the concepts to recommend approval of the LPP for the project at 65% Federal / 35% non-Federal cost sharing.

The consultant's efforts with these offices resonated well and ASA took up the charge to direct the field to develop the Chief's Report pushing for the requested recommendations to be completed in 2011. The consultant is meeting with ASA's office and Headquarters on a regular basis to keep them on message and the field acting in accordance.

### **Water Resources Development Act of 2010**

The consultant briefed Ms. Duerr that the House Transportation and Infrastructure Committee was preparing to mark-up its WRDA bill and that it included no Republican project requests including the Truckee from Congressman Heller. As the bill does not have Republican input, it will be difficult to progress. However, House Committee staff may try to push for that in the near-term. Congressman Heller did not request the project as he held firm to the no earmark pledge.

The consultant, however, will be meeting with both House and Senate Committee staff over the next several weeks to brief them on the project in anticipation of the Chief's Report and Senator Reid's interest in having the project authorized.

### **FY 2011 Appropriations and FY 2012 Budget**

The consultant is continuing to work with Senator Reid and Committee staff to find the best opportunity for funding construction for the project in FY 2011. At the same time, the consultant is beginning to lay the groundwork for FY 2012 budget effort.



## **Monthly Status Report**

### **Washoe County August 2010**

During the month of August, your consultant was involved in, and advised on the following activities on behalf of Washoe County.

#### **Flood Project Issues – Early Corps’ Construction**

In an effort to supplement the \$4.5 million in FY2011 General Investigation funds for the Truckee River Project in the Senate Energy and Water Development Appropriation Bill and include construction funds, the consultant visited with the staff of Senator Reid on available options. The consultant advised that she believed that although the Committee did not include new construction start dollars in the Subcommittee’s bill at mark-up, that the bill was not done and there were opportunities for including construction funds as the bill was folded into either a Continuing Resolution, an omnibus appropriation bill, or as a stand-alone bill in conference. Senator Reid’s office agreed and the consultant suggested a meeting with the Senate Appropriations staff, Reid’s staff and the consultant to discuss these options and come up with a plan to include not only construction funding but directive funding in how to spend the funds.

Senator Reid’s office set the appointment and the consultant and Reid’s staff had a positive meeting with the Senate Appropriations staff, who by the end of the discussion, agreed to try to include the construction funding request and directive language in conference with the House. The Committee staff asked the consultant to get an updated fact sheet from the Corps on construction funding which would support construction funding using FY 2011 funds. This meeting and agreement to try was a very positive development and the consultant set to work with the Corps.

#### **ASA-Policy Initiative - Community-Based Solutions – ASA and Headquarters Follow-up**

The consultant continued to meet with ASA’s staff and Corps Headquarters to push them on using our concepts developed and submitted of 100-year protection as a federal standard and the reduction of unnecessary planning to achieve an expedited and positive Chief’s Report with the proper cost-sharing for the Truckee River Project. The consultant continued to push for a completed Chief’s Report for the Truckee River Project by 2011, in time to be included in the Water Resources Development Act (WRDA) for construction authorization of the Project. ASA staff and Headquarters agreed with this approach and this timetable and pushed the Corps’ Sacramento District

to achieve this objective and timetable. The consultant discussed strategies for keeping the Corps District on task with Ms. Duerr and worked with the Sacramento District to push to achieve the objective.

### **Water Resources Development Act of 2010**

The consultant met with the House and Senate WRDA Committee staff to brief them on the status of the Truckee River Project, shared with them the authorized action language we developed and on our plans for achieving a positive Chief's Report in 2011. We were advised by the House Committee staff that the Chairman planned to try to bring the bill to the House floor in September. We asked for consideration of our request in the bill. However, we know that Congressman Heller did not request due to the earmark ban, so the language will come from the Senate side. However, we were able to have a positive conversation about the project with House staff.

On the Senate side, we had good discussions with Chairwoman Boxer's staff on the project and requested that the Committee consider including the Truckee language in the WRDA bill as a conditional authorization, based on an approved Chief's Report. The Committee staff has this under consideration now. The consultant also talked to Senator Reid's office and briefed them on WRDA developments and asked for their help in pushing our authorization language as a conditional authorization in WRDA. Senator Reid's office is pushing this issue with Committee staff.

### **FY 2011 Appropriations and FY 2012 Budget Request for the Truckee River Project**

The consultant is working the FY 2011 funding issue to open up opportunities with Committee staff to also secure construction funds and directive language for the project. In addition, the consultant is working to understand FY 2012 budget capability for the project, so the consultant can work this request with Corps Headquarters and OMB.



## FLOOD PROJECT COORDINATING COMMITTEE STAFF REPORT

**MEETING DATE: September 10, 2010**

**DATE:** September 3, 2010  
**TO:** Flood Project Coordinating Committee Members  
**FROM:** Naomi Duerr, Director, Truckee River Flood Management Project,  
850-7420, [nduerr@washoecounty.us](mailto:nduerr@washoecounty.us)  
**SUBJECT:** UPDATE ON FORMING A JOINT POWERS AUTHORITY FOR THE FLOOD PROJECT

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### **SUMMARY**

Discussion and possible direction on status and timeline for the formation of a new Interlocal Cooperative Agreement between the cities of Reno and Sparks, and Washoe County to implement a new JPA (Flood Management Authority), including the financing, construction, ownership, operation and maintenance of the Truckee River Flood Management Project.

### **PREVIOUS ACTION AND ACTIVITIES**

Note: For a list of activities prior to 2010 see the March 2010 report.

**Finance Subcommittee 1-19-10:** Finance Subcommittee reviews the Key Provisions of the new Cooperative Agreement for the JPA

**FPCC meeting 1-21-10:** FPCC approves the Key Provisions for the JPA

**Council and Commission Meetings – January 25-27, 2010:** Reno and Sparks Councils and Washoe County Commission receive briefings on the Key Provisions for the JPA.

**Joint Meeting 2-1-10:** Reno, Sparks and Washoe County all approve the Key Provisions of the JPA

**FPCC Meeting 2-12-10:** Update on the Drafting of the Cooperative Agreement for the JPA

**FPCC Meeting 3-12-10:** Update on the Drafting of the Cooperative Agreement for the JPA

**FPCC Meeting 4-9-10:** Update on the Drafting of the Cooperative Agreement for the JPA

**FPCC Meeting 5-14-10:** Update on the Drafting of the Cooperative Agreement for the JPA

**FPCC Meeting 6-11-10:** Update on the Drafting of the Cooperative Agreement for the JPA

**Joint Meeting 7-12-10:** Update on the status of the formation of the JPA

**Staff Meetings:**

**Flood Funding Oversight 7-9-2010:** Review of draft JPA

**Flood Funding Oversight 7-26-2010:** Review of draft JPA

**Flood Funding Oversight 8-6-2010:** Review of Draft JPA

**Flood Funding Oversight 8-23-2010:** Review of Draft JPA

**August 26, 2010:** Joint Planning and Public Works Meeting on Article 4

**Flood Funding Oversight 9-1-2010:** Review of Draft JPA

**September 7, 2010:** Joint Planning and Public Works Meeting on Article 4

**BACKGROUND**

**JPA Cooperative Agreement**

Legal staff finalized a draft of the new Cooperative Agreement for the JPA. Review by technical and financial staff is ongoing and expected to continue through August. An update on the progress of the JPA document was presented at the July 12, 2010 Joint Meeting.

The draft JPA document was distributed to the members of the Flood Funding Oversight Team and has been thoroughly reviewed. A final meeting scheduled for September 10 (after the FPCC meeting) and should bring the document review process close to closure. Meetings are being scheduled in September with the Managers to complete their review. Staff expects to have the JPA document ready for a FPCC workshop at their October meeting, and for consideration by all jurisdictions at the November Joint Meeting. A public meeting is being planned the last week in September. The JPA document will be circulated for public review prior to the meeting. A proposed timeline for completion of the JPA is shown on the next page.

**JPA regulatory provisions:** The staff oversight committee and planning and public works staff have met five times in the last month to refine the JPA text and prepare it for finalization. Flood project staff are now scheduling another series of meetings with the builders, developers, real estate agents and contractors prior to the public meeting.

**Sparks provisions:** Sparks has tentatively agreed to their section in the JPA draft, however the final details are still under consideration.

**UNR MOU:** Another pending issue is resolution of the Memorandum of Understanding with UNR regarding transfer of certain land assets which are needed for the flood project to function from UNR to the Flood Project. Staff have drafted and a MOU with UNR and sent it to UNR the week of Sept 6. We expect to have a signed MOU prior to approval of the JPA agreement at the Joint Meeting in November.

The timeline for approval of the JPA Cooperative Agreement is shown below.

## **Timeline for Development of the JPA Cooperative Agreement**

As of Sept 3, 2010

<b>Date</b>	<b>Activity</b>
February 1, 2010	Reno, Sparks and Washoe County governing bodies approve Key Provisions at Joint Meeting
February and March 2010	Legal Staff develop draft of new JPA Cooperative Agreement
April - June 2010	Flood Project staff vet sections of JPA Cooperative Agreement and refine issues re: development review, Sparks rates, UNR MOU, etc.
July 12, 2010	Joint Meeting update on JPA Agreement progress
July, August and September 2010	Flood Funding Oversight Team vet agreement
September 2010	Managers Vet the JPA text Stakeholder and Public Review of JPA Agreement
October 2010	FPCC Workshop on JPA Cooperative Agreement
November 2010	Board of Regents consideration of MOU with UNR (if necessary) Joint Meeting consideration of JPA Agreement
Winter 2010	Establish and organize JPA

### **FISCAL IMPACT**

No fiscal impact from this agenda item.

### **RECOMMENDATION**

It is recommended that the FPCC discuss the JPA development process and timeline, and provide possible direction to staff regarding establishing a Joint Powers Authority for the Flood Project.

### **POSSIBLE MOTION**

I move to accept the report and provide possible direction on development of the Cooperative Agreement for the new JPA to implement a new Flood Management Authority.

NSD:nsd



## FLOOD PROJECT COORDINATING COMMITTEE STAFF REPORT

**MEETING DATE: September 10, 2010**

**DATE:** August 27, 2010

**TO:** Flood Project Coordinating Committee Members

**THROUGH:** Naomi Duerr, Director, Truckee River Flood Management Project, 850-7420, [nduerr@washoecounty.us](mailto:nduerr@washoecounty.us)

**FROM:** Melissa Faigeles, Natural Resource Planner, Truckee River Flood Management Project, 850-7460, [mfaigeles@washoecounty.us](mailto:mfaigeles@washoecounty.us)

**SUBJECT:** **APPROVAL OF A TRACTION PROJECT AND FUNDING AGREEMENT FOR PLANNING AND DESIGN OF THE TRACY POWER PLANT ECOSYSTEM RESTORATION PROJECT**

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### **SUMMARY**

This agenda item recommends Flood Project Coordinating Committee (FPCC) approval of a Truckee River Action (TRAction) Project for ecosystem restoration at the Tracy Power Plant. It also recommends the FPCC approve a funding agreement between the Truckee River Flood Management Project (Flood Project) and The Nature Conservancy (TNC) for an amount not to exceed \$250,000 for planning and design work for the Tracy Power Plant ecosystem restoration project and forwarding that agreement to the Washoe County Board of Commissioners for consent.

The Tracy Power Plant site is one of eleven proposed ecosystem restoration projects included in the Flood Project and is included in both the U.S. Army Corps of Engineers (Corps) National Economic Development (NED)/ National Ecosystem Restoration (NER) Plan and the Locally Preferred Plan (LPP). Planning and design for the Tracy Power Plant restoration project is estimated to cost approximately \$250,000. Total project cost—including planning and design, permitting, and construction—is currently estimated at about \$5 million.

### **PREVIOUS ACTION**

**August 18, 2006** FPCC approved the TRAction Program.

**March 12, 2010** FPCC approved the FY 10-11 Flood Project Budget which included the Tracy Restoration Project Design as a planned Capital Project

## **BACKGROUND**

The Tracy Power Plant site is one of eleven proposed ecosystem restoration projects included in the Flood Project and is included in both the U.S. Army Corps of Engineers (Corps) National Economic Development (NED)/ National Ecosystem Restoration (NER) Plan and the Locally Preferred Plan (LPP). Planning and design for the Tracy Power Plant restoration project is estimated to cost approximately \$250,000. Total project costs—including planning and design, permitting, and construction—is currently estimated at about \$5 million.

The Flood Project seeks authorization to spend up to \$250,000 in 1/8-cent sales tax funds for planning and design for Tracy Power Plant Restoration Project. Planning and design activities include conducting initial site assessments and surveys; preparing designs, specifications, and construction bid packages; and preparing an Environmental Assessment report. Additional funding sources for the restoration project may include the U.S Bureau of Reclamation's (USBR) Desert Terminal Lakes (DTL) Program and State Question 1: Parks and Open Space Bond (SQ1), administered by Washoe County Regional Parks and Open Space Department (WC Parks). The Flood Project also plans to research other grant funding opportunities to supplement the construction costs.

Approval of the Tracy Power Plant Ecosystem Restoration TRAction Project and expenditure of the \$250,000 for planning and design could ultimately result in approximately \$750,000 to \$2.8 million in additional non-federal (local) funds credited to the local cost-share requirement for the Flood Project. By leveraging these funds under the standard Corps' cost-share formula (35% local sponsor: 65% federal), our investment could provide significant returns with regard to local cost-share credit and generate substantial federal funds to support additional restoration along the Truckee River.

### **TRAction Program and Corps' Section 113 Credit:**

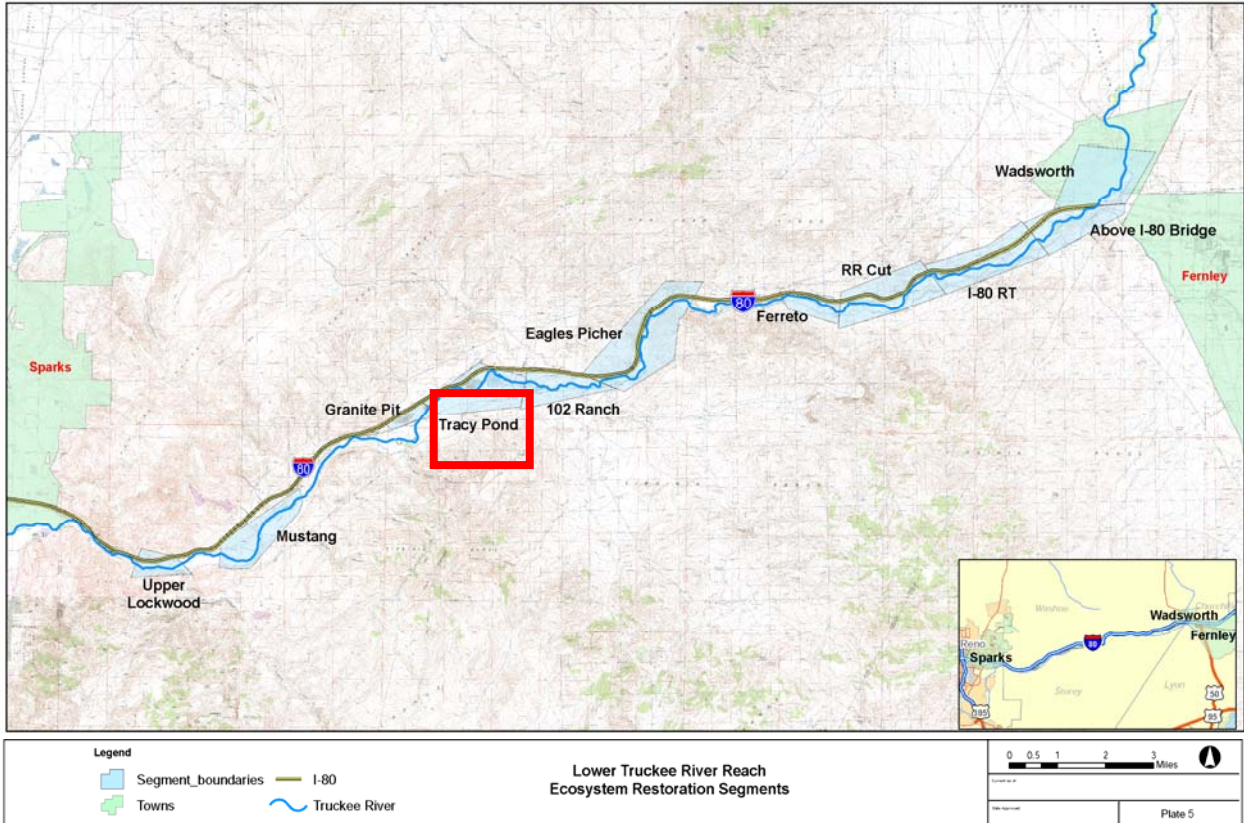
Restoration of the Truckee River serves multiple goals including flood control, improved water quality, improved habitat for fish and wildlife, and recreation. Washoe County, the City of Reno, and the City of Sparks are serving jointly as the non-federal (local) sponsor of the Truckee River Flood Project. River restoration is an important component of the project.

The Flood Project has identified 11 sites along the Truckee River as potential sites for ecosystem restoration. Figure 1 shows the relative locations of these restoration sites. The Tracy Power Plant site is located east of Reno/Sparks and upstream of the 102 Ranch restoration site. The Tracy Power Plant Restoration Project has been identified as a component of both the NED Plan and the LPP, and supports the "living river" approach developed by the Flood Project Community Coalition with active participation by the Corps.

In 2006, the FPCC authorized implementation of the TRAction Program to facilitate construction of individual Flood Project elements prior to the Corps' completion of a comprehensive flood plan for authorization and funding by Congress. The TRAction Program provides funding for feasibility studies, design, construction and construction management for qualifying Flood Project elements. Work is completed by one or more of the Flood Project partners using the contracting resources of those entities. Through this program, early construction of Flood Project elements can be credited toward the local sponsor's cost-share obligation.

Section 113 of Public Law (P.L.) 109-103 (Senator Reid's law) allows credit for "early" restoration efforts associated with the Flood Project (this is similar to Section 104 of P.L. 99-662,

which allows credit for early construction of flood damage reduction features). “Early” is defined as occurring prior to the signing of the Corps’ Project Partnership Agreement for the Flood Project. The Corps has already approved Section 113 applications for ecosystem restoration at Lockwood, 102 Ranch, and Lower Mustang Ranch and the Truckee River Flood Project has constructed those projects in concert with a variety of partners. Approval of the Tracy Power Plant TRAction Project as a Section 113 project would allow the Flood Project to apply for local sponsor cost-share credit from the Corps.



**Figure 1.** Map of the Flood Project’s 11 proposed restoration sites along the lower Truckee River. The Tracy Power Plant site is shown within the red box.

**Phase I: Project Planning, Design and Permitting:**

The non-profit The Nature Conservancy was selected as the ideal partner for the Tracy Restoration Project as they have already successfully completed the construction of Lockwood, 102 Ranch, and Mustang Ranch restoration projects in conformance with the Corps’ NED/ NER Plan and has secured supplemental funding sources for the project.

The proposed restoration project at Tracy Power Plant would occur on six parcels of land owned by NV Energy (Figure 2). TNC is currently negotiating the terms of a license agreement with NV Energy in order to gain access to the property to begin the planning and design phase of the project. The agreement should be finalized within the next month. The Flood Project and TNC are also considering the inclusion of one parcel of land owned by Mars Petcare just upstream of the NV Energy parcels which contains valuable floodplain habitat. Flood Project and TNC staffs have recently begun discussions with Mars Petcare staff about this request. In addition, a

former gravel pit just downstream of the NV Energy parcels that is jointly-owned by the Bureau of Land Management, Truckee River Investors, and Hoss Equipment is also under consideration for inclusion in the project. The inclusion of the gravel pit would allow connection of the 102 Ranch and Tracy Power Plant ecosystem restoration projects.

The proposed funding agreement with TNC is for the planning and design phase of the Tracy Power Plant Restoration Project. The planning and design phase is slated to begin in Fall 2010 and continue into Winter 2011. The first task will include obtaining a license agreement with NV Energy. Subsequent planning and design activities may include conducting initial site assessments and surveys; preparing designs, specifications, and construction bid packages; and preparing an Environmental Assessment.

The actual construction of the project is contingent upon obtaining the required permits and approvals and the successful negotiation of a conservation easement for the properties. The project permitting phase will take place between Winter 2011 and Spring 2012. Flood Project and TNC staff will negotiate the terms of the easement over the coming year. Per Corps' real estate requirements, the easement will be held in the Flood Project's name.

### **Future Phase II: Construction**

After completion of the planning and design phase and attainment of the easement, Flood Project staff may request the FPCC enter into a funding agreement with TNC for the project construction phase. Project construction would include excavation of about 775 feet of new channel meanders, construction of approximately 8.85 acres of new cobble-riffle habitat, and restoration of about 53 acres of riparian habitat (Figure 3). In addition, in order to prevent future capture of the river by the former gravel pit northwest of the power plant, now used by NV Energy as a cooling pond, bank stabilization and erosion protection measures will be constructed. Also, if included, the former gravel pit east of the NV Energy parcels will be filled and converted to wetland habitat. Following earth-moving activities, the site would be revegetated with native riparian and upland plant species. Construction of the project is slated to begin Summer 2012 and would be completed over a two-year period, in two phases: first, the portion upstream of the NV Energy bridge and then the portion downstream of the NV Energy bridge.

Future sources of construction funds include:

#### **U.S. Bureau of Reclamation: Desert Terminal Lakes Program**

The Desert Terminal Lakes Program, administered by USBR, began in 2002 with the enactment of P.L. 107-171, which provided \$200 million "to provide water to at-risk natural desert terminal lakes" but prohibited leasing or purchasing water rights. To achieve this goal, USBR awards grants and enters into cooperative agreements with other organizations.

P.L. 110-161 (enacted in 2007) earmarked an additional \$68.25 million, which specifically allocated (among other important allocations) \$6 million for Lower Truckee River restoration projects identified by Reno, Sparks, and Washoe County. TNC has already applied for and been awarded \$2.2 million from the DTL program for restoration projects. TNC has agreed to commit these funds to the Tracy Restoration Project.

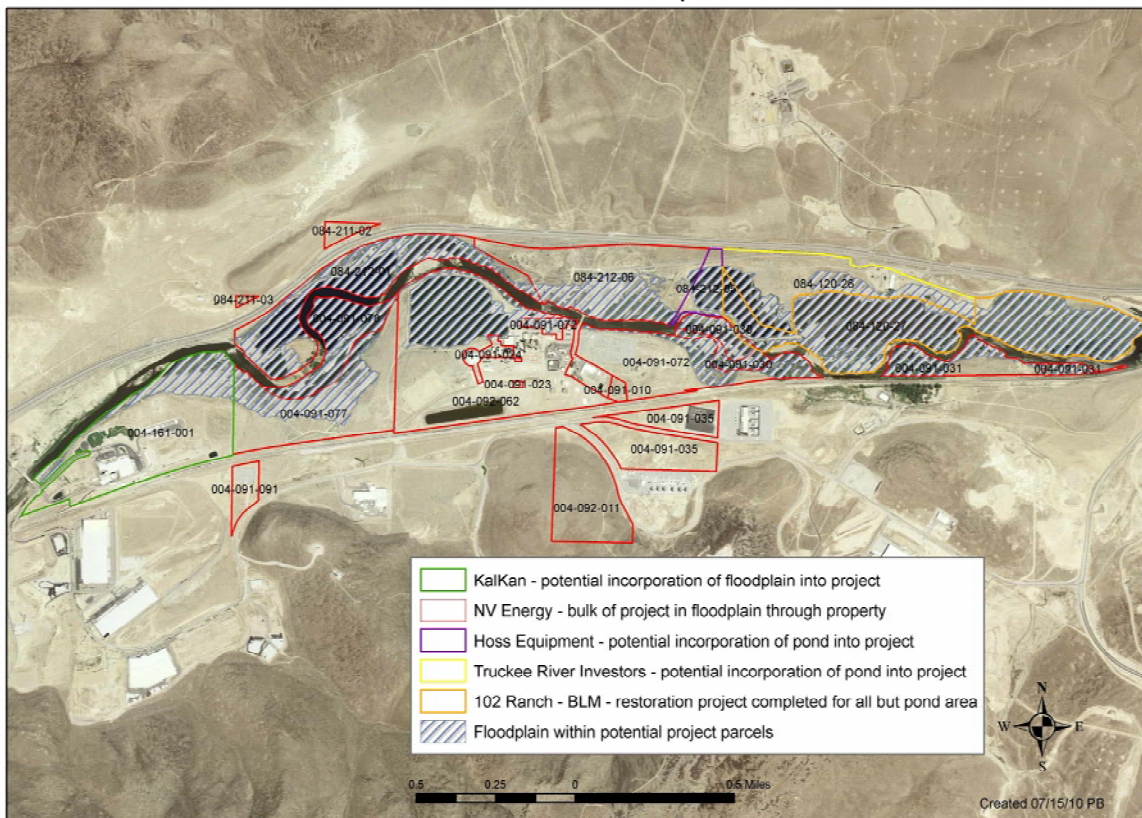
#### **State Question 1: Parks and Open Space Bond**

In 2002, Nevada voters approved State Question 1 (SQ1) to preserve and protect the state’s natural resources. Under SQ1, \$10 million was allocated to Washoe County to enhance and restore the Truckee River corridor. These funds must be used specifically to:

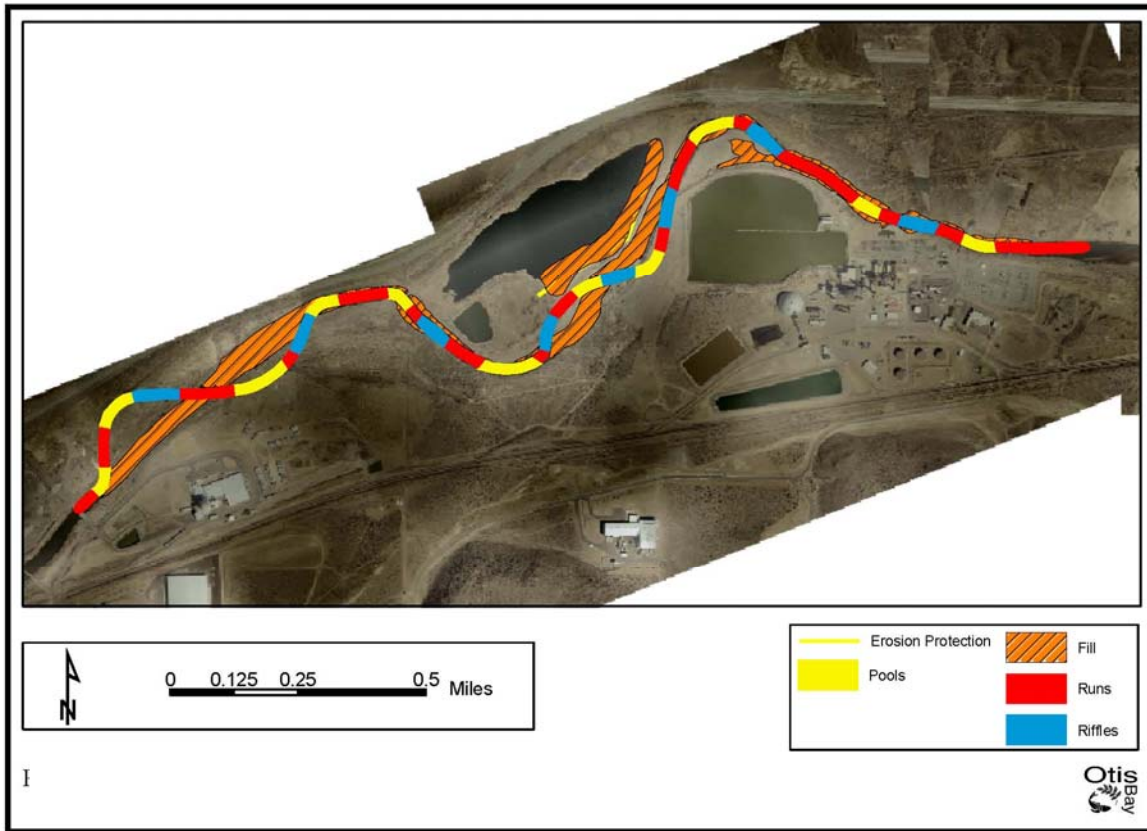
- Acquire and develop land and water rights;
- Provide for recreational facilities;
- Provide parking for and access to and along the river; or
- Restore the Truckee River.

All SQ1 projects require an equal (50:50) match; bond funds are to be leveraged through partnerships, collaborations, grants and donations. The SQ1 funds are administered through WC Parks.

The Washoe County Board of County Commissioners approved a list of projects and funding amounts to be completed using funds generated from the November 2002 SQ1 bond measure. In 2009, the Flood Project and TNC recommended that the Tracy Restoration Project be placed on SQ1 list as a restoration project to benefit local residents. The project is now included on the SQ1 funding list in the amount of \$500,000.



**Figure 2.** Proposed Tracy Power Plant Ecosystem Restoration Project parcel ownership map.



**Figure 3.** Tracy Power Plant feasibility-level restoration design map.

**Project Budget and Match Leveraging:**

As discussed above, the planning and design phase for the Tracy Restoration Project is estimated to cost about \$250,000 and the total project budget is estimated at approximately \$5 million. The Flood Project now seeks authorization to spend up to \$250,000 in Flood Project funds for project planning and design at the Tracy Power Plant. Other funding partners for this project include WC Parks (SQ1 funds) and USBR (Desert Terminal Lakes Program). Secured funding sources are listed in Table 1 below:

**Table 1.** Funding Sources for the Tracy Power Plant Ecosystem Restoration Project

<b>Funding Source</b>	<b>Amount</b>
USBR (Desert Terminal Lakes)	\$2,200,000
Washoe County Parks (SQ1)	\$500,000
Flood Project (1/8-cent sales tax)	\$250,000
	<b>\$2,950,000</b>

Table 1 shows that \$2.95 million has been secured for the project, leaving a \$2.05 million shortfall. Since construction of the project is not slated to begin until Summer 2012, Flood Project staff intend to aggressively pursue different grant funding opportunities over this time period. Also, depending on TRAction project priorities and availability of funds for FY 12-13, the

Flood Project may request the FPCC approve supplementing the remaining project funding needs with additional Flood Project funds.

Under standard Corps' cost-share formulas (35% local sponsor: 65% federal), our investment and that of the other non-federal contributors could provide significant leverage opportunities and generate substantial federal funds to support additional restoration along the Truckee River.

The USBR funds of approximately \$2.2 million are from a federal source, and thus not part of the traditional leveraging opportunity with the Corps. However, it is possible that USBR would allow the use of these funds as part of the cost-share for Corps' work. In any event, the BOR contribution would offset the need for additional local funds on a dollar for dollar basis.

Approving the Tracy Power Plant Restoration project as a TRAction Project will facilitate timely and cost-effective implementation of the project and will ensure that all reasonable efforts will be made by the signatory parties to secure early implementation credit from the Corps for eligible expenses related to the restoration project.

**TRAction Project Criteria:**

Since the inception of the TRAction Program, Flood Project staffs have evaluated each project application using the following basic criteria to determine whether the proposed project:

- ✓ Is sponsored by a public/government agency?
- ✓ Is included in both the NED/NER Plan and the LPP?
- ✓ Would cause no adverse impact to others?
- ✓ Provides benefit as a stand-alone project (i.e., will provide value even if other Flood Project elements are not built)?
- ✓ Is technically feasible, cost-effective, and affordable?

**The proposed Tracy Power Plant TRAction Project meets all of these basic criteria.**

Washoe County, through the Flood Project, would serve as the government agency sponsor. This project budget utilizes other funding sources that can potentially qualify for Corps cost-share credit under Section 113. The project is designed to provide separate restoration benefits without causing adverse impacts to others; it is technically feasible and TNC is well-qualified to manage the construction effort. Flood Project staff would provide services to coordinate with the Corps and report on grant fund expenditures (if applicable).

The Flood Project Technical Advisory Committee (TAC) has recommended some additional factors to consider in awarding a TRAction Project. These factors have not been ranked or prioritized by the TAC, and list order does not indicate importance of criteria. The additional factors are listed below. Those factors relevant to this project are highlighted:

- **Degree of flood protection or mitigation provided**
- Degree of flood damage reduction provided
- **Magnitude of ecosystem restoration provided**
- Whether or not the project includes a recreational component

- **Project placement within the Corps' overall engineering and construction sequence (e.g., working downstream-to-upstream; creation of mitigation before implementation of new flood damage reduction projects)**
- **Potential to leverage outside funds (other than Flood Project funds)**
- **Affordability (i.e., ability to fit project into existing funding streams)**
- **Opportunity to purchase necessary lands and easements**
- Individual project benefit-to-cost ratio (Corps does not apply to restoration projects)
- Total project cost estimate (is it realistic?)
- **Potential to provide significant cost savings to the overall Flood Project and local community**
- Risk of pending development (avoid losing an opportunity)
- Evaluation of an award for a TRAction design phase should include evaluation of the construction phase at the same time.

The bolded TRAction Project evaluation factors listed above are addressed by this restoration project. Briefly, the project will provide bank stabilization, help mitigate for the additional flood flows which are expected as a result of implementation of the overall Flood Project, and complete the restoration at the Corps Tracy Power Plant site. Potential recreation amenities are currently under development with our partner agencies. The Corps recommends constructing downstream elements prior to construction of upstream elements of the Flood Project. This project will effectively leverage other sources of funding and help fulfill Corps matching requirements for the Flood Project. Constructing this project now should result in overall project cost savings, help stimulate our economy, and reduce future draws on the 1/8-cent sales tax.

#### **Interlocal Funding Agreement:**

Staff has developed a draft Interlocal Funding Agreement between the Flood Project and TNC for the planning and design phase of the Tracy Power Plant Restoration Project (Attachment 1). The agreement proposes a not-to-exceed budget of \$250,000 from the Flood Project. The role of the Flood Project in the agreement is to:

- 1) Ensure Flood Project staff is involved in finalizing the project design so that it meets the flood mitigation and ecosystem restoration goals included in the Corps' NED and LPP plans.
- 2) Facilitate submittal of the Section 113 application to the Corps.
- 3) Ensure the project is implemented in such a way as to continue to be potentially eligible for Section 113 credit.
- 4) Ensure project documents and files are available for inspection by the Corps for cost-share credit evaluation purposes.

#### **FISCAL IMPACT**

The potential fiscal impact for the planning and design phase of the project is \$250,000. There are sufficient Flood Project funds available in the approved Fiscal Year 2010-2011 budget Fund 494 for this expenditure.

**RECOMMENDATION**

Staff recommends the FPCC:

1. Approve restoration of the Tracy Power Plant as a TRAction Project;
2. Approve a funding agreement between the Flood Project and TNC for planning and design for the Tracy Power Plant Restoration Project;
3. Authorize the expenditure of up to \$250,000 in Flood Project funds for Phase I - Planning and Design; and
4. Request the Washoe County Board of Commissioners to enter into an agreement between the County and The Nature Conservancy for Phase I: Project Planning and Design.

**POSSIBLE MOTION**

Motion to approve the staff recommendation.

**Attachments:** DRAFT Project Funding Agreement for the Tracy Power Plant Ecosystem Restoration Design Project

MF:nsd

**PROJECT FUNDING AGREEMENT**  
**(Tracy Power Plant Ecosystem Restoration Design Project)**



**Contents**

<b>Article 1</b>	<b>Parties and Definitions</b> .....	2
§1.01	Parties.....	2
§1.02	Definitions.....	2
<b>Article 2</b>	<b>Recitals</b> .....	3
<b>Article 3</b>	<b>Completion of the Design Project</b> .....	4
§3.01	Ownership and responsibilities of Conservancy .....	4
§3.02	Project Management Team .....	5
§3.03	Legal requirements; payment of penalties and fines.....	6
<b>Article 4</b>	<b>Financing by County</b> .....	7
§4.01	County obligation to provide grant funding.....	7
§4.02	Submission, approval and payment of payment requests. ....	7
<b>Article 5</b>	<b>Mutual Obligations; Relationship of Parties; Indemnifications</b> .....	8
§5.01	Books, records, inspection and audit; access. ....	8
§5.02	Status of parties, officials and employees.....	8
§5.03	Indemnifications .....	8
<b>Article 6</b>	<b>Timing; Performance; Breach and Remedies</b> .....	9
§6.01	Time schedule; termination of this agreement.....	9
§6.02	Timing; further assurances; standards for approval.....	10
§6.03	Nonappropriation of funds.....	10
§6.04	Default and remedies .....	10
<b>Article 7</b>	<b>General Provisions</b> .....	12
§7.01	Assignment; delegation; binding effect .....	12
§7.02	Notices .....	12
§7.03	Applicable law; severance of unenforceable provisions; non-merger .....	13
§7.04	Interpretation of agreement.....	13
§7.05	Implementation and modification of agreement.....	14
§7.06	Entire agreement; counterparts; approval .....	14

## **Article 1 Parties and Definitions**

### ***§1.01 Parties.***

THIS AGREEMENT is by and between

**County** Washoe County, Nevada, a political subdivision of the State of Nevada for the benefit of the Truckee River Flood Management Project  
c/o Flood Project Office  
9390 Gateway Drive, Suite 230  
Reno, Nevada 89521-8900  
Attn: Danielle Henderson, Natural Resource Manager

**Conservancy** The Nature Conservancy,  
a District of Columbia nonprofit corporation  
Nevada Field Office  
One East First Street, Suite 1007  
Reno, Nevada 89501  
Attn: Mickey Hazelwood, Truckee River Project Director

### ***§1.02 Definitions.***

**Director** means the Director of the Truckee River Flood Management Project as designated by the Flood Project Coordinating Committee, so long as the County remains a party to this Agreement, and when this Agreement is assigned to the Truckee River Flood Management Authority, the Executive Director as designated by its Board of Directors.

**Tracy Power Plant Ecosystem Restoration Project / Restoration Project** means a project to restore land owned by NV Energy immediately north of the Tracy Power Plant along the Truckee River to reconnect the river to its floodplain, restore channel sinuosity, and prevent future capture of the river to by the former gravel pit north of the river. Parcels owned by Mars, Hoss Equipment, Truckee River Investors, and the Bureau of Land Management are also under consideration for inclusion in the restoration project. The restoration project includes constructing new channel meanders, building up midchannel gravel bars, and implementing erosion protection measures along the south side of the former gravel pit, now operated by NV Energy as a cooling pond, to prevent future capture of the river by the former gravel pit.

**Tracy Power Plant Ecosystem Restoration Design Project / Design Project** means (i) preparing all planning documents including all designs, plans, specifications, environmental reports required by the U.S. Army Corps of Engineers to satisfy the National Environmental Protection Act, and all construction bid documents; and (ii) coordinating design specifications and funding for the Tracy Power Plant Ecosystem Restoration Project.

**Truckee River Flood Management Project / Flood Project** means the project created under the Truckee River Flood Management Project Cooperative Agreement entered into in 2005, by the cities of Reno and Sparks, Nevada, Washoe County, Nevada, and the University of Nevada, to plan, design, construct, operate and maintain certain improvements along the Truckee River to reduce flood damage; restore the Truckee River ecosystem; improve fish passage; and enhance recreational opportunities along the Truckee River corridor.

**Infrastructure Fund** means the fund described in the Nevada Revised Statutes (“NRS”), Section 377B.150, which includes the proceeds of the Infrastructure Sales Tax.

**Infrastructure Sales Tax** means a 1/8% sales tax authorized by NRS Chapter 377B and imposed in Washoe County in 1998 to, among other things, finance the Truckee River Flood Management Project. See Bill 1223, Ordinance No. 1047, enacted in November 1998 and amended on October 13, 2009.

**Infrastructure Sales Tax Plan** means the plan adopted under NRS 377B.100 (6) for the expenditure of Infrastructure Sales Tax, as amended from time to time.

**Project Management Team / PMT** means the Project Management Team appointed under §3.02 of this Agreement.

**USACE** means the United States Army Corps of Engineers.

## **Article 2 Recitals**

¶2.01.A The Conservancy is a non-profit conservation organization dedicated to the construction of projects to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive; and as a part of that mission desires to design and build the Tracy Power Plant Ecosystem Restoration Project (“Restoration Project”) using funds from several federal and state resources.

¶2.01.B. The Restoration Project is an approved element of the Truckee River Flood Management Project (“Flood Project”), and the County has determined that its design and construction will substantially benefit the residents of the County and therefore desires to participate in and contribute \$250,000 from the Infrastructure Fund to the Tracy Power Plant Ecosystem Restoration Design Project (“Design Project”).

¶2.01.C As it is a part of the overall Flood Project being planned and designed by the County and USACE, the Design Project needs to be coordinated and integrated with other elements of the Flood Project along the Truckee River. The County is the “non-federal sponsor” for the Flood Project and as such has the responsibility under USACE regulations for assuring such coordination, and as a result needs to be involved in planning and design decisions and parameters of the Design Project;

NOW THEREFORE in exchange for the mutual covenants contained herein, the parties agree as follows:

### **Article 3 Completion of the Design Project**

#### ***§3.01 Ownership and responsibilities of Conservancy.***

¶3.01.A Ownership. The Conservancy shall own the results of and shall be the lead agency responsible for the management of the Design Project, subject to §3.02 below.

¶3.01.B Project financing. Before incurring any expenses or costs that would be payable out of funding to be provided by the County under this Agreement, and before submitting any payment request, the Conservancy shall have cash on hand and/or enter into binding contracts or commitments that provide sufficient funding to pay the entire estimated costs and expenses of the Design Project. The financing contracts or commitments shall be reviewed with the Project Management Team (“PMT”).

#### ¶3.01.B Duties.

1. The Conservancy shall, within reasonable times:
  - (i) enter into, perform and enforce all contracts for the Design Project and all amendments or modifications thereto;
  - (ii) prepare and secure appropriate approval of all designs, plans, specifications, and construction bid packages;
  - (iii) obtain all permits and regulatory approvals;
  - (iv) prepare and conduct any required public hearings and, through oversight and direction of the federal agency, USACE, obtain appropriate approval of all environmental documents (e.g., Environmental Assessments, Findings of No Significant Impact, and/or Environmental Impact Statement) required by state and federal law, including the National Environmental Policy Act, National Environmental Pollution Prevention Act, and state and federal historic preservation requirements;
  - (v) prepare all documents and permits required by the USACE before construction may commence, including, but not limited to Section 113 pre-project authorization credit determination (which must be executed by the County), Section 106 historic consultation request, Section 404 discharge permit, and Section 408 encroachment permits;
  - (vi) prepare, secure approval for and administer all funding requests, agreements and documentation;
  - (vii) coordinate, cooperate with and assist the Flood Project in preparing, co-signing, and submitting USACE cost-share credit

- applications (under Section 113 of Public Law 109-103 or otherwise) for the Design Project and Restoration Project;
- (viii) enter into a License Agreement with the Project Property Owner(s) giving the Conservancy and the Flood Project the right to occupy and use a portion of the Project Property to complete the design work, and shall enter into any further agreements necessary to accomplish the construction and maintenance of the Restoration Project;
  - (ix) negotiate terms, enter into any agreements, or acquire properties owned by Mars, Hoss Equipment, Truckee River Investors, and/or the U.S. Bureau of Land Management, that are under consideration for inclusion in the Restoration Project;
  - (x) enter into any agreements with the State of Nevada and appropriate property owners necessary to accomplish the rerouting of the Truckee River as contemplated by the Restoration Project;
  - (xi) facilitate the negotiation of a restoration easement to be entered into by the Project Property Owner(s) and the County prior to construction; and
  - (xii) perform other duties as necessary to complete the Design Project.

2. The Conservancy shall refer all of the above matters to the PMT for review and recommendations, and, if requested, shall from time to time make presentations or discuss matters with committees reviewing or coordinating activities of the Flood Project. The Conservancy shall keep the PMT informed of public meetings (including stakeholder meetings).

### **§3.02 *Project Management Team (“PMT”).***

¶3.02.A Duties. The parties agree to coordinate their efforts at the staff level through the PMT, which will oversee the Design Project, review and make recommendations on all aspects of the budgeting, financing, planning, design, scheduling and progress of the Design Project.

¶3.02.B Composition. The Director of the Flood Project and the Nevada State Director of the Conservancy (the “Appointing Authorities”) shall each appoint at least one member to the PMT. Appointments to the PMT shall be informal and may change as people with different disciplines are needed to look at aspects of the Design Project from time to time. The PMT is an administrative staff team which is intended to provide advice to the Appointing Authorities. A representative of the Conservancy shall be chair of the team.

¶3.02.C Meetings and dispute resolution.

1. The PMT shall meet on the call of the chair, who shall prepare agendas for the meetings. The PMT is not a public body within the meaning of the Nevada Open Meeting Law (NRS Chapter 241).

2. At least one representative of the Conservancy and the County must be present at all PMT meetings. Project management team meetings will be held when matters of project design, scope, schedule, coordination with the USACE, and/or cost are to be decided. The chair may ask for the consensus of those present at a meeting, but formal votes are not required.

3. If there is significant disagreement between members of the PMT, team members shall report the differences to the Appointing Authorities who shall meet and confer to resolve the disagreement. So long as the Appointing Authorities meet and confer in good faith if they fail to resolve the disagreement, such a failure by itself shall not constitute a material breach of this Agreement.

**§3.03 *Legal requirements; payment of penalties and fines.***

¶3.03.A The Conservancy shall follow all requirements of federal, state and local law as well as the Conservancy's policies, practices and requirements with respect to projects and agreements in performing its duties hereunder.

¶3.03.B Penalties and fines for violations of the forgoing shall not be paid out of grant proceeds under Article 4 hereof.

¶3.03.C Standards of Performance.

1. Design standards. The Conservancy shall coordinate the design standards with and shall comply with the hydrologic, hydraulic and structural standards of USACE, but may request interpretations and waivers if approved by the PMT. As the Restoration Project is one of several ecosystem restoration projects included in the Flood Project, the Conservancy, in consultation with the PMT, shall ensure that the design of the Restoration Project is in conformance with Flood Project plans.

2. Diligence. As the completion of the Restoration Project is essential to the start of upstream parts of the Flood Project, the Conservancy agrees to use its best efforts to complete the Design Project in a timely manner, it being understood that the Design Project is bound to federal processes, agreements, and consulting agency/ parties contributions which may directly influence and limit the schedule.

## **Article 4    Financing by County**

### **§4.01            *County obligation to provide grant funding.***

¶4.01.A        Amount and source of funds.    Subject to the terms and conditions in this Agreement, County agrees to appropriate a sum up to but not to exceed TWO HUNDRED AND FIFTY THOUSAND DOLLARS (US\$ 250,000.00) from the available funds in the Infrastructure Fund, and to grant funds from that appropriation to the Design Project.

¶4.01.B        Purpose and use of funds.    Funds shall be granted as requested from time to time by the Conservancy for actual, necessary and reasonable costs of performing any duty under this Agreement, so long as the funds are used for a permissible purpose under applicable law, including the limitations and requirements of NRS Chapter 377B with respect to use of the Infrastructure Fund.

### **§4.02            *Submission, approval and payment of payment requests.***

¶4.02.A        Payment requests and vouchers.    Payment requests may be submitted monthly to the Director.

¶4.02.B        Payment vouchers.    Each payment request shall be accompanied by a voucher that explains the purpose and use of the funds, and an invoice or proof of payment and supporting documentation sufficient for the Director to determine if funds are properly payable under this Agreement.

¶4.02.C        Representation and warranty.    The Conservancy warrants and represents that each voucher and supporting documentation (e.g. invoices, proofs of payment, etc.) presented for payment is complete and accurate, does not omit any material facts, and that all services or materials identified have actually been performed or delivered to the satisfaction of the Conservancy in accordance with an approved contract or commitment.

¶4.02.D        Approval requirements.    Approval of payment requests shall not be unreasonably withheld or delayed. Payment requests may be rejected by the County only if (i) there is a material breach of this Agreement by the Conservancy; (ii) the underlying contract for which payment is being made was not reviewed by the PMT; (iii) payment of the amount would cause County to exceed the funding commitment hereunder; or (iv) the County reasonably believes that payment would be an unauthorized use of Infrastructure Funds under the Infrastructure Sales Tax Plan, or the amount is unnecessarily excessive.

¶4.02.E        Payment.    Payment requests shall be paid within thirty (30) days of receipt of property documented requests by the Conservancy.

## **Article 5 Mutual Obligations; Relationship of Parties; Indemnifications.**

### **§5.01 *Books, records, inspection and audit; access.***

¶5.01.A Each party agrees to keep adequate and accurate books and records with all aspects of its performance under this Agreement and the administration of the Design Project, and to keep such records for a period of six (6) years from the end of the fiscal year that the Design Project is completed. If any litigation concerning the Restoration Project or the Design Project is begun before the expiration of this six-year period, records, documents, electronically stored information and other information must be preserved for six (6) calendar years from the date of the resolution of the litigation.

¶5.01.B The Conservancy shall prepare quarterly reports of the sources and uses of funds for the Design Project and shall present the reports to the PMT. If accountings or reports are required under another funding agreement, such accountings may be presented in lieu of the reports required by the previous sentence.

¶5.01.C Each party shall allow authorized representatives of the other party full and free access to their offices and where Design Project work is performed and to the accounts, records and books, including the right to make copies from such accounts, records and books.

¶5.01.D Each party agrees to truthfully and fully cooperate with any audit of its books and records and performance hereunder by the other party or by a federal or state agency regulating or providing funding for this Design Project.

### **§5.02 *Status of parties, officials and employees.***

¶5.02.A Nothing in this Agreement creates or implies a partnership, joint venture or similar association. The parties are independent of one another, and neither is an agent of or obligated to the other except as specifically provided herein.

¶5.02.B 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.

### **§5.03 *Indemnifications.***

#### **¶5.03.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, 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 Indemnifying 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.

¶5.03.B Indemnification. 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) that may be available, each party (the "Indemnifying Party") shall indemnify, hold harmless and defend the other party (the "Indemnified Party") from and against all liability to the extent caused by an act, error or omission of the Indemnifying Party or a Related Party arising out of the administration of this Agreement.

¶5.03.C Conditions. 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. Any party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement with respect to any act, error or omission which occurred before expiration or early termination.

## **Article 6 Timing; Performance; Breach and Remedies.**

### ***§6.01 Time schedule; termination of this agreement.***

¶6.01.A County's obligation to provide funding under this Agreement expires on December 31, 2015, unless sooner terminated or discharged, or unless extended by written agreement of the parties.

¶6.01.B The Conservancy may terminate this Agreement with or without cause at any time prior to submission of the first payment request.

**§6.02 *Timing; further assurances; standards for approval.***

¶6.02.A Timing. 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.

¶6.02.B Further assurances. 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 Design Project in accordance with the terms of this Agreement.

¶6.02.C Standards of approval. Unless otherwise specified (such as with the words “sole discretion”) wherever this Agreement requires the approval of the governing body of a party, or any of a party’s officers, agents or employees, such approval shall not be unreasonably withheld, delayed or conditioned. The governing body of the County is a legislative body 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 it provided, however, that decisions are not procured by fraud or bribery, or are arbitrary, capricious or an abuse of discretion.

**§6.03 *Nonappropriation of funds.***

This Agreement extends beyond the terms of the county commissioners who are presently in office and are voting on its approval, and as a result, under NRS 244.320, unless otherwise provided by law, this Agreement is binding beyond those terms of office only to the extent that money is appropriated for the performance of this Agreement or for a like item or service. If no funds or insufficient funds are appropriated and budgeted by future governing bodies or are otherwise unavailable by any means whatsoever in any fiscal year to make payments or honor obligations under this Agreement, the County shall immediately notify the Conservancy of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which appropriations of existing funds were made, without penalty or expense to the County of any kind whatsoever.

**§6.04 *Default and remedies.***

¶6.04.A Excuse due to *force majeure*.

1. Except as provided elsewhere herein, if an event of *force majeure* makes performance of an obligation or cure of a breach or default impossible, such performance

or cure is excused for the duration of the event of *force majeure* provided that the obligated party (i) within a reasonable time after the commencement of the *force majeure* notifies the other party of the nature of the event of *force majeure*, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the *force majeure*, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default.

2. An event of *force majeure* is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; delay caused by unusually severe or extreme weather; lack of transportation attributable to any of these; or (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of an alleged violation of the prevailing wage provisions in this Agreement, if any); (iii) provided, however, that if the breach or default is the failure to pay money, the *force majeure* must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A *force majeure* does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

¶6.04.B Default. Subject to §6.02, and ¶6.03.A, a default occurs when (i) a party repudiates, breaches or fails to perform any material obligation, term or provision in this Agreement including a failure to perform any requirement in accordance with any schedule attached hereto; (ii) a party who is responsible to cause a material event to occur fails to have such event occur by the time required; (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 event otherwise described in this Agreement as a breach or default occurs.

¶6.04.C Notice and Right to Cure. Unless otherwise specified in this Agreement, and unless prohibited by law, in the event of the default, the 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; provided however, that in the event such default is not capable of being cured within said time period but is capable of being cured, the defaulting party has substantially commenced to cure said default and diligently pursues cure, the defaulting party shall be granted an additional period not to exceed sixty (60) days to so cure said default.

¶6.04.D Remedies.

1. In general. If the event of a material default is suffered or caused by any party and not cured within the period of time specified, the 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) terminate this Agreement; (iii)

pursue any other remedy specifically provided in this Agreement; and/or (iv) bring an action for damages or equitable relief.

2. Remedies cumulative. 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.

¶6.04.E Attorney's fees and 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, reasonable 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).

¶6.04.F 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.

## **Article 7 General Provisions**

### **§7.01 *Assignment; delegation; binding effect.***

¶7.01.A Upon formation of the Truckee River Flood Management Authority ("Authority"), if the Authority agrees to perform all of the duties of the County hereunder, the parties agree that the Authority shall be substituted for the County under this agreement.

¶7.01.B 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.

### **§7.02 *Notices.***

¶7.02.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. Failure to provide additional notices indicated in Article 1 does not make service to the party defective.

¶7.02.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 (3) business days after it is received by the U.S. Post Office as indicated on the receipt, whichever is earlier.

¶7.02.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.

**§7.03 *Applicable Law; severance of unenforceable provisions; non-merger.***

¶7.03.A Applicable law, jurisdiction and venue. This Agreement shall be construed under and governed by the laws of the State of Nevada, and any action to enforce it shall be brought in the Second Judicial District Court for the State of Nevada.

¶7.03.B Severance of unenforceable provisions. Each term and provision of this Agreement 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. 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. 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.

**§7.04 *Interpretation of agreement.***

¶7.04.A Interpretation of agreement. Titles and headlines of this Agreement are intended for editorial convenience and are not to be construed as a part of this agreement. The word “include” or “including” is not intended as a limitation and shall be construed to include the words “but not limited to.” 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. Any reference to another document (statute, resolution, plan, contract, etc.) includes the reference to all amendments thereto. 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.

¶7.04.B No drafting assumptions. The parties hereto were each advised by counsel in drafting and negotiating this agreement. No presumptions against or in favor of any party are appropriate based on who drafted this Agreement or any provision herein.

***§7.05 Implementation and modification of agreement.***

¶7.05.A Authority to implement.

The Director shall have the authority to approve disbursements of all appropriated funds and make all approvals under this Agreement except increases in the amount of the County's commitment hereunder, and those specifically reserved to the governing body under this Agreement or applicable law.

¶7.05.B This agreement may be modified or amended only upon the approval of the governing bodies of the parties.

***§7.06 Entire agreement; counterparts; approval.***

¶7.06.A Each person who signs this Agreement below warrants and represents that this Agreement has been duly approved by the governing bodies of the parties and 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 party.

¶7.06.B 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 representations, warranties, promises or statements made during the discussion and formation of this Agreement, and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All attachments hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

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

EXECUTED ON THE DATES INDICATED

PROJECT FUNDING AGREEMENT  
(Tracy Power Plant Ecosystem Restoration Design Project)

**Counterpart Signature Page**

**COUNTY**

Washoe County, a political subdivision of the State of Nevada

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

Attest

By \_\_\_\_\_ Date \_\_\_\_\_  
County Clerk

Approved as to Form:  
RICHARD GAMMICK,  
District Attorney

By \_\_\_\_\_  
Deputy

PROJECT FUNDING AGREEMENT  
(Tracy Power Plant Ecosystem Restoration Design Project)

**Counterpart Signature Page**

**CONSERVANCY**

The Nature Conservancy, a District of Columbia non-profit corporation

By \_\_\_\_\_

Date \_\_\_\_\_

Kathryn Landreth,  
Nevada State Director



## FLOOD PROJECT COORDINATING COMMITTEE

### STAFF REPORT

**MEETING DATE: September 10, 2010**

**DATE:** August 4, 2010

**TO:** Flood Project Coordinating Committee Members

**THROUGH:** Naomi Duerr, Director, Truckee River Flood Management Project, 850-7420 [nduerr@washoecounty.us](mailto:nduerr@washoecounty.us)

**FROM:** Paul Urban, Project Manager, Truckee River Flood Management Project [purban@washoecounty.us](mailto:purban@washoecounty.us)

**SUBJECT: APPROVAL OF PHASE II OF THE REGIONAL HYDROLOGIC MODEL CONTRACT WITH MANHARD ENGINEERING IN AN AMOUNT NOT TO EXCEED \$850,000 AND RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS CONSENT TO THIS CONTRACT AND EXECUTE IT.**

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### **SUMMARY:**

This is a request to enter into a Professional Engineering Services Agreement with Manhard Consulting, Ltd. in an amount not-to-exceed \$850,000 to develop Phase II of the regional hydrologic model. This work will expand on what was developed for the Phase I Sun Valley Pilot Project and apply this data and process to the Truckee River watershed above the Vista Gage.

Attached is a draft Agreement for Professional Services for the Phase II Regional Hydrologic Model Project (Attachment 1). The TAC has recommended approval of Phase II of the Project with the condition that the Scope of Work, deliverables and budget be refined with more detail prior to approval by the Washoe County Board of County Commissioners. At the time of this, writing staff are still negotiating the revised scope of work with Manhard. The revised scope will be provided to the FPCC under separate cover prior to the FPCC meeting.

### **PREVIOUS ACTIONS:**

**RWPC Meeting 2004:** Regional Water Planning Commission adopts interim policy to provide flood storage mitigation at a ratio of 1-to-1 (excavation to fill) in Critical Flood Zone #1

**BCC Meeting 2004:** Policy for providing a 1-to-1 ratio for floodplain storage volume lost to fill in flood areas is included in the updated Regional Water Plan in 2004.

**2004 and 2005:** Both Reno and Washoe County adopt flood storage mitigation ordinances.

**FPCC Meeting 2-9-07:** Flood Project Coordinating Committee recommends changes to the current flood storage mitigation requirements to increase the level of assurance that construction impacts in Critical Flood Zone #1 will be fully compensated. FPCC adopts a policy of No Adverse Impact.

**BCC Meeting 3-14-08:** Presentation of the Truckee River Flood Management Project budget including \$1,000,000 for developing the Regional Hydrologic Model.

**FPCC Meeting 4-11-2008:** FPCC approval to issue a Request for Qualifications (RFQ) to firms for the development of a regional hydrologic model.

**BCC meeting 5-13-08:** Approval to issue a Request for Qualifications (RFQ) to engineering firms for the development of a regional hydrologic model for the flood project.

**June 27, 2008:** RFQ for Regional Hydrologic Model is released.

**January 21, 2009:** FPCC approval of an Agreement with Manhard Engineering for development of a Phase-1 Regional Hydrologic Model in the amount not-to-exceed \$195,000.

**February 10, 2009:** BCC approval of an agreement with Manhard Engineering, LTD for development of a Phase-1 Regional Hydrologic Model in the amount not-to-exceed \$195,000.

**April 20, 2010:** Workshop with TAC, interested engineers and Manhard Engineering discussing the results of the Sun Valley Pilot Project and the recommendation that the GSSHA model be used to develop the model throughout the entire Truckee River Watershed above the Vista gage.

**August 24, 2010:** Second workshop with TAC, interested engineers, and Manhard Engineering discussing the results of the Sun Valley Pilot Project and the recommendation that the GSSHA model be used to develop the model throughout the entire Truckee River Watershed above the Vista gage.

**August 27, 2010:** TAC votes to approve the Phase II contract with Manhard contingent on the provision of a more detailed scope, cost estimate, schedule, and plan for coordination with the flood project staff to be added before final approval by BCC.

### **BACKGROUND:**

In order for the local sponsors to enter into a Project Partnership Agreement (PPA) with the U.S. Army Corps of Engineers (Corps) for the design and construction of the Truckee River Flood Management Project, the local sponsors must have a regional floodplain management plan developed with the ability and intent to implement it. The floodplain management plan needs to include actions the local sponsors will take to prevent, or mitigate, changes in watershed hydrology due to land use changes that will potentially degrade the effectiveness of the flood project and lower its level of protection.

One of the tools to protect the flood project was the development and implementation of the Critical Flood Zone #1 floodplain storage mitigation ordinances. A number of years and

much effort went into developing criteria to make sure that new developments in the critical flood zones won't adversely affect the flood project and how it functions. However, the recommended floodplain storage volume mitigation ordinances only deal with the specific characteristics and storage conditions of Critical Flood Zone #1. Refinements to those ordinances are now in the process of being adopted by Reno and Washoe County.

Constructed land use changes in the remaining parts of the watershed may contribute additional runoff into the Truckee River Flood Management Project area. This may adversely affect the flood project. Changes in land use also impact the shape of the runoff hydrograph, timing of the runoff, flow velocities, and sedimentation potential, all of which affect the level of protection of the flood project.

Hydrologic changes that send more runoff and/or sediment into the flood project storage area will tend to increase water surface elevations and flow velocities. Higher flood levels means less protection from the flood project. Higher flow velocities and sedimentation can cause operation and maintenance issues that need to be mitigated. Increased flows, leaving the flood project area and continuing downstream, may increase flood risk downstream and may adversely impact the processes and stability of the Truckee River that are required for the environmental health of the river. Increased flows can also adversely impact downstream water quality and fish restoration efforts on the river. Knowing the potential impact of land use change and eventual development will allow the Flood project and the flood projects' partners to plan and respond appropriately.

Based on the risks to the flood project from land use changes higher in the watershed and in zones other than Critical Flood Zone #1, it is essential that a tool be developed that can evaluate the hydrologic changes that will occur with land use changes and the eventual construction of projects that will follow. That tool is a new regional hydrologic model designed with a resolution sufficient to determine impacts from land use changes as small as 5 to 10 acres. The hydrologic model will be designed and built to be robust enough to be easily adapted to: 1) address and evaluate various types of land use changes and proposed construction, 2) to develop criteria for evaluation of new development and 3) provide information for planning approaches to deal with future adverse floods and flood impacts.

### **Selection Process:**

The Flood Project partners worked together to develop a Request for Qualifications (RFQ) and conceptual scope of work for development of the hydrologic model, and reviewed the submittals based on their knowledge and experience in leading edge hydrologic science and modeling specific to the Truckee Meadows. The RFQ was advertised through the Washoe County Purchasing Department via newspaper ad. Eleven submittals were received of which three firms were interviewed: David Ford Engineering, Baker Engineering, and Manhard Consulting Ltd.

The interview team was composed of: Joe Coudriet from the City of Reno, Kimble Corbridge from Washoe County, Shawn Gooch from the City of Sparks, and Paul Urban from the Truckee River Flood Project. Following a detailed interview process, Manhard Consulting Ltd. was selected to develop the model.

**Benefits of the Model:**

The new hydrologic model will provide valuable watershed hydrologic information to allow the Flood Project to monitor planned and constructed land use changes and development projects to evaluate their impact to flooding in the watershed, especially impacts to the performance of the Flood Project. The Flood Project will be required by the anticipated Corps' Project Partnership Agreement (PPA), to annually report on the level of protection the flood project is providing.

Flood impact information from the model will be useful for planning departments as they make decisions on growth and development in the region. Knowing the potential impacts of planned and "to be constructed" development could be used to plan flood reduction measures in the region to improve public safety. This information could also be used by the Cities and County to develop facility plans for flood management facilities in the region.

Flood impact information from the model will be used by the Flood Project to recommend development design criteria to mitigate flood impacts. These recommendations would then be forwarded to the City of Reno, City of Sparks and Washoe County for their consideration of including these criteria in appropriate ordinances. This information could also be used to defend permit and other conditions placed on various development applications as appropriate. The model will allow for better evaluation and determination of the cumulative effects of flood impacts as they happen in the watershed.

**Phase II Project**

In order to be efficient in the design and development of this model and eliminate, or minimize, the potential for duplicative efforts, a single watershed was used to perform a pilot project as a Phase 1 of the modeling effort. The test watershed used was the Sun Valley Watershed where we have highly reliable measurements of flows and water levels that occurred during the December 31, 2005 flood. Four different modeling software packages were used to evaluate this watershed, each with differing levels of resolution. The pilot project determined, on a small scale, changes in process or technique that need to occur in order to efficiently develop the hydrologic model for the much larger watershed area. The results have led to the modeling process to be used in developing the hydrologic model for the entire Truckee River Watershed above the Vista Gage as described in the attached Scope of Work.

The Sun Valley Watershed was selected as the pilot watershed since it had good rainfall, land use, soil cover and peak flood elevation data for the Dec 31, 2005 storm event. The pilot study evaluated four different models, their data requirements, data input process, ease of revising and changing data, ease in model set-up, and closest match to predicting the 2005 event with the ability to measure land use changes on an area as small as 5 acres.

The pilot study recommended that the use of the GSSHA gridded model with modifications to take into account water movement in the vadose zone (the unsaturated zone between the ground and the water table) along side channels in the watershed.

If this contract is approved, the GSSHA model will be set-up and applied to the entire Truckee River Watershed above the Vista Gage and calibrated. A manual on the use of the model will be developed and a small contingent of staff will be trained on the model. The

process of setting up the model and the results of calibration will be included in a report along with recommendations for use of the model and what type of training, operations and maintenance procedures need to be developed in the third phase of the Regional Hydrologic Model development.

**FISCAL IMPACT:**

Manhard Engineering has proposed that the work described above can be performed at a cost not-to-exceed \$850,000. Sufficient funds from the 1/8 cent sales tax dedicated to the Truckee River Flood Project exist in Fund #211, account number 211001-710100, Professional Services, to fund the Regional Hydrologic Model Phase1 project.

**RECOMMENDATION:**

It is recommended that the FPCC approve and forward to the Board of County Commissioners for consent Phase II of the Hydrologic Model contract with Manhard Engineering in an amount not to exceed \$850,000.

**POSSIBLE MOTION:**

Motion to approve and forward to the Board of County Commissioners for consent Phase II of the Regional Hydrologic Model contract with Manhard Engineering in an amount not to exceed \$850,000.

**DRAFT**  
**AGREEMENT FOR PROFESSIONAL SERVICES WITH**  
**MANHARD ENGINEERING**

Dated as of \_\_\_\_\_

**Article 1 PARTIES AND SCHEDULE OF TERMS**

This Agreement is by and between the following parties and involves the following terms:

<b>“County”</b>	Washoe County, a political subdivision of the State of Nevada for the benefit of the Truckee River Flood Management Project 9390 Gateway Drive, Suite 230 Reno, NV 89521-8900
<b>“Authorized Representative”</b>	<ul style="list-style-type: none"><li>• Mike Sullens, Purchasing and Contracts Manager for contract changes.</li><li>• Mimi Fujii-Strickler for invoice approvals and coordination of project.</li></ul>
<b>“Contractor”</b>	Manhard Consulting LTD 9850 Double R Blvd. Suite 101 Reno NV 89521
<b>“Authorized Representative”</b>	Jeffrey House, P.E, Vice President
<b>“Project”</b>	Phase II of the Development of the Regional Hydrologic Model
<i>Services to be performed</i>	Professional Engineering Services as set forth in the Scope of Services attached hereto as Attachment B. All persons performing engineering services under this agreement must be (or must be directly supervised by) a licensed Professional Engineer in the state of Nevada.
<i>Time Schedule</i>	Contractor to commence on Notice to Proceed and work must be completed by July 31, 2011
<i>Fees for services; payment schedule</i>	Per hourly rates set out in Exhibit A to Attachment B payable on monthly invoice as provided in ¶4.03.A
<i>Expenses; payment schedule</i>	The fee schedule is on a time and materials basis and from those fees Contractor will pay all expenses incurred in the performance of its obligations.
<i>Maximum Contract Amount</i>	Not to exceed \$850,000

<i>Compensation review period</i>	None.
<i>Term of Agreement</i>	This Agreement commences when approved and executed by all parties and, unless sooner terminated as provided in Article 6 below, terminates on June 1, 2010

**Article 2 RECITALS**

A County is the contract administrator for the Truckee River Flood Management Project under a Cooperative Agreement between the County, the cities of Reno and Sparks, Nevada, and the University of Nevada originally dated April 12, 2005, as amended. However, the Truckee River Flood Management Authority, a joint powers authority created by a cooperative agreement among Washoe County, the City of Reno and the City of Sparks, is being formed and when and if it is formed, all contracts related to the Truckee River Flood Management Project will be assigned to that Authority.

B. In furtherance of the Project, County needs the services set forth above to be performed and has selected Contractor based on Contractor’s expertise and qualifications and the proposal set forth as Attachment B.

NOW THEREFORE, the Parties agree as follows:

**Article 3 SERVICES TO BE PERFORMED BY CONTRACTOR; STANDARDS; INDEPENDENT CONTRACTOR.**

**§3.01 Services.**

County hereby hires Contractor to perform the services indicated above and within the time schedule set forth above. In the event there is a conflict between the provisions of any attachment to this Agreement and the terms herein, the terms herein shall control.

**§ 3.02 Time schedule; Notice to Proceed**

¶3.02.A Contractor and County shall perform their respective obligations hereunder within the time schedule set forth above. The parties may amend this schedule from time to time in writing to accommodate unforeseen circumstances, and shall amend the schedule to accommodate force majeure (defined in §6.06), suspension of the Project, or if County fails to timely give a notice to proceed or timely meet its obligations under §4.04.

¶3.02.B Work shall not commence until Contractor is given a notice to proceed, and payment shall not be made for work not authorized under a notice to proceed.

**§3.03 Additional services; change orders.**

¶3.03.A Contractor shall provide such extra or additional services as may be agreed upon between the County and Contractor in writing (which writing shall be deemed an amendment to this Agreement), and such services are governed by the provisions of this Agreement as amended.

¶3.03.B Change orders for changes to fees or additional work may be approved by the Authorized Representatives in accordance with §7.09.

**§3.04 Licenses; permits; compliance with law.**

¶3.04.A Contractor shall at all times maintain all professional and business licenses required by law for the performance of the services and shall inform County if any license is revoked.

¶3.04.B In the performance of services, Contractor shall comply with all applicable regulatory requirements including: (i) federal, state and local laws, rules, regulations, orders, codes, criteria and standards; and (ii) if a professional certification or license is required to perform the services, all professional canons and standards applicable to the profession. Contractor shall require the same in its agreements with each subcontractor or supplier of materials, labor, equipment or services. If any complaint or proceeding is commenced against Contractor regarding the violation of any applicable regulatory requirement or professional standard in the performance of services hereunder, Contractor shall immediately notify County.

**§3.05 Standards.**

In the performance of the services, Contractor shall use the same degree of care, skill and diligence that is standard for the profession or industry for the services being performed as that standard exists in the Washoe County area. This provision shall survive the termination of this Agreement but only with respect to services performed before this Agreement was terminated. In addition to other remedies, Contractor shall, at no cost to County, re-perform any service that does not meet this standard.

**§3.06 Independent Contractor; No agency relationship.**

¶3.06.A Contractor is performing the Services as an independent contractor and not as an employee or agent of the County. Accordingly, Contractor shall provide its own insurance and employee benefits and is neither Contractor nor any of its employees or subcontractors are entitled to any County immunities, insurance, medical, employment or retirement benefits.

¶3.06.B Except to the extent expressly indicated in Attachment B, Contractor is not authorized to act as an agent of County in making representations or undertakings binding on the County.

**§3.07 Indemnifications and insurance.**

Contractor agrees to indemnify County and to provide insurance as provided in Attachment A.

**§3.08 Records.**

Contractor shall, concurrently with the performance of services hereunder, prepare substantiating records regarding services rendered and shall retain all such records, correspondence, notes, memoranda of verbal communications, data, documents and information used in the performance of its duties under this Agreement for a period of five years from completion of its duties or termination of this Agreement. If requested by County, or if advised that such records may include evidence relevant to litigation, arbitration or dispute resolution proceedings, Contractor shall retain such records until County advises that they may be released. Upon reasonable advance notice Contractor shall make such records available for inspection and copying to County.

**§3.09 Approved personnel, consultants and subcontractors.**

¶3.09.A Prior to their performing of any services hereunder Contractor shall obtain approval from County of all professional personnel, all consultants and all subcontractors who will perform work under this Agreement.

¶3.09.B Notwithstanding approval by County, Contractor shall be responsible for the competency of services performed and quality of goods provided by the Contractor's personnel, consultants and subcontractors and shall assure that their work complies with all requirements of this Agreement.

**§3.10 Representations, warranties and agreements of Contractor.**

¶3.10.A Contractor represents, warrants and agrees as follows and further agrees that to the extent there was a breach during the term of this Agreement and County has been damaged, that these representations and warranties survive the termination of this Agreement.

- (i) All representations, documents and information provided by Contractor to County in connection with County's determination as to Contractor's qualifications are true, accurate, complete, and do not omit any material information.
- (ii) Contractor has not and will not offer or accept any gifts, contributions, bribes, kickbacks or remuneration from or to any person or entity with respect to securing approval of this

- Agreement, the Project or any of Contractor's duties or performance under this Agreement.
- (iii) All of the invoices submitted to County hereunder are complete, and accurate and do not omit any material facts, and that all services identified therein have actually been performed and all expenses listed therein have actually been incurred for goods or services actually delivered to Contractor.
  - (iv) Contractor shall not, without permission of County engage or recommend the engagement of any consultant, supplier, contractor or other person or entity in which the Contractor has any direct or indirect pecuniary interest to provide goods or services to the Project.

#### **Article 4      COMPENSATION AND OBLIGATIONS OF COUNTY**

##### **§4.01      Fees for services.**

¶4.01.A      County shall pay Contractor professional service fees as provided in Article 1 above.

¶4.01.B      If a fee review period is specified in Article 1 above, at the expiration of the review period, Contractor may request a change in the fee schedule by demonstrating a change in costs of providing the services, and County agrees to review the request. Changes to the fee schedule may be approved by Authorized Representatives as provided in §7.09.

##### **§4.02      Time and materials; Extraordinary expenses.**

¶4.02.A      Unless otherwise specified in Article 1 above, the fee schedule in Attachment B is on a time and materials basis and includes all expenses incurred by Contractor, including but not limited to expenses for travel, meals, entertainment, telephone, facsimile, postage or express delivery charges, and reproduction and copying expenses.

¶4.02.B      If, in addition to fees to be paid, the County has agreed in Article 1 above to reimburse contractor for certain expenses:

1.      The County will only pay actual, necessary and reasonable expenses. Contractor may not mark up or add administrative costs to actual expense charges.
2.      Travel expenses (including meals and entertainment while traveling) must be approved in advance by the Authorized Representative of County.
3.      Meals shall be payable according to the schedule for such expenses available to County employees.

##### **§4.03      Submittal and payment of Invoices, interest**

¶4.03.A      Contractor shall submit invoices for fees and expenses in accordance with the schedules specified in Article 1 above. Such invoices shall:

- (i) be submitted within six months of the date of the performance of services or incurring of expenses per NRS 244.250;
- (ii) identify the Project and provide a brief report as to the status of the Project from the Contractor's standpoint;
- (iii) state the time period that the services were rendered and expenses were incurred;
- (iv) for fees: briefly describe the services performed, who performed them, when they were performed, the number of hours (which may be rounded to the ¼ hour), the hourly rate, and the total fees sought for the described service;
- (v) for extraordinary fees to be reimbursed outside of the fee schedule: identify the type and amount of the expense and attach invoices or proof of payment, and authorization, if required; and
- (vi) include a signature of an authorized agent of Contractor and such signature shall be deemed to include a representation and warranty that the services and expenses identified in the invoice were actually performed or incurred in the amounts stated.

¶4.03.B County shall promptly review invoices for completeness and within seven days from receipt inform Contractor of any additional information needed.

¶4.03.C County shall pay invoices within 45 days after received. If County has requested additional information, the invoice is deemed received when the information has been provided to the satisfaction of County.

¶4.03.D If, without excuse, and subject to ¶6.03.B, payment is not made as provided above, County shall pay interest on the principal unpaid amount of the invoice at a rate equal to nine (9) per cent per annum simple interest based on actual days elapsed.

¶4.03.E In exchange for a prompt promise to pay invoices, Contractor agrees that payment of invoices shall not be deemed to constitute acceptance of services or a waiver of any breach with respect to the services, products or expenses indicated on the invoice.

#### **§4.04 Duty to cooperate with Contractor.**

¶4.04.A County shall provide Contractor with information held by County and which is reasonably necessary to assist the Contractor in performing its services. By furnishing such material, the County does not represent, warrant or guarantee its accuracy either in the whole, in part, implicitly or explicitly, and shall have no liability therefor.

¶4.04.B County shall review documents prepared by Contractor in a timely manner and in accordance with any schedule requirements. Review by the County shall be solely for the purpose of determining whether such documents are generally consistent with the County's intent. No such review of such documents shall relieve the Contractor of any of its professional responsibilities.

**Article 5 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**§5.01 Nature and use of information provided by County.**

All information, documents, and electronic media furnished by the County to the Contractor (i) belong to the County; (ii) shall not be used by the Contractor on any other project or in connection with any service not described in this Agreement; and (iii) shall be returned to County if requested, although Contractor may retain a copy if necessary for professional records and that fact is disclosed by Contractor. Documents that are marked “Proprietary” or “Confidential” are furnished solely for use on the Project in this Agreement and shall be kept confidential by the Contractor unless Contractor is compelled by subpoena or order of a court or administrative agency of competent jurisdiction, in which case, Contractor shall notify County of the subpoena or order.

**§5.02 Nature and use of information provided by Contractor.**

Upon delivery to the County, all information, documents or electronic media prepared by or on behalf of the Contractor for the Project become the property of the County free of any retention rights of the Contractor. The Contractor hereby grants to County an unconditional right to use, for any purpose, such documents or electronic media, free of any copyright claims, trade secrets or other proprietary rights.

**§5.03 Intellectual Property indemnification.**

To the fullest extent permitted by law, and unless otherwise indicated in writing delivered to County, Contractor shall defend, protect, hold harmless, and indemnify County from and against any and all liability, loss, claims, demands, by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights with respect to documents provided by Contractor to County under this Agreement.

**Article 6 TERM, SUSPENSION AND TERMINATION OF AGREEMENT; BREACH AND REMEDIES FOR BREACH.**

**§6.01 Term**

This Agreement commences and terminates as specified in Article 1 above, provided, however, that representations and warranties and other provisions designated herein shall survive the termination of this Agreement.

**§6.02 Suspension and abandonment.**

¶6.02.A County may suspend performance under this Agreement and shall promptly pay Contractor for all services and expenses up to the date of suspension.

¶6.02.B If the suspension exceeds 90 days, County shall also on resumption of the Agreement: (i) reimburse Contractor for all actual, reasonable and necessary expenses incurred by Contractor due to the suspension (e.g. storage expenses, expenses to protect the work product, subcontractor penalties, etc.), and (ii) shall adjust the fee schedule equitably over the remainder of the contract period.

¶6.02.C If the County decides to abandon the Project, it shall promptly inform Contractor and shall terminate this Agreement under §6.04.

### **§6.03 Early termination for cause; Retention of payments due.**

¶6.03.A Either party may terminate this Agreement for cause based on the uncured breach of the other party provided that notice and opportunity to cure have been provided under §6.08. After the expiration of the notice and cure period, this Agreement automatically terminates unless otherwise indicated by the non-breaching party.

¶6.03.B If this Agreement is terminated by County for cause, County may withhold or offset against amounts due to Contractor those sums reasonably believed by County to be damages to County for (i) unsatisfactory work, (ii) costs of correcting the problem or breach, (iii) value of County's time spent in correcting the problem or breach; (iv) any prospective increase in costs resulting from the problem or work; and (v) costs resulting from the termination of this Agreement. If, however, County withholds or offsets any such amount and it is determined in subsequent arbitration or judicial proceedings which have become final and are not subject to further appeal that County wrongfully withheld or offset against such payment, then County agrees to pay Contractor interest on the amount improperly withheld calculated and adjusted on a quarterly basis as simple interest based on actual days elapsed, and not compounded. The rate of interest will be calculated on the first day of the withholding or offsetting and adjusted every 90<sup>th</sup> day thereafter and will be equal to the rate quoted by at least three insured banks, credit unions or savings and loan associations in this State as the highest rate paid on a certificate of deposit whose duration is approximately 90 days.

### **§6.04 Early termination without cause.**

County may terminate this agreement without cause upon giving the Contractor notice in writing which shall specify a date not less than seven (7) days from the date of the notice on which the Agreement will terminate. Should County decide to terminate in accordance with this section. Issuance of a notice to proceed does not waive or abrogate the right of County to terminate this Agreement under this section.

### **§6.05 Duties on termination.**

¶6.05.A Upon early termination with or without cause, each party agrees:

1. To return to the other party all documents and property provided by and belonging to the other party, and take reasonable steps to protect such documents and property until it is received by the providing party.
2. To cease doing work and take reasonable actions to mitigate damages.
3. To promptly submit invoices for amounts due and unpaid; and
4. County shall promptly pay all compensation and expense reimbursement due to Contractor as of the date of the notice of early termination, subject to ¶6.03.B above.
5. Other than as provided above, no termination payments or damages are due and payable.

**§6.06 Delays in performance due to force majeure.**

¶6.06.A Except as provided elsewhere herein, if an event of *force majeure* makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the event of force majeure provided that the obligated party (i) within a reasonable time after the commencement of the force majeure notifies the other party of the nature of the event of force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default.

¶6.06.B An event of *force majeure* is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war, insurrection, riot, flood, earthquake, fire, casualty, act of God, act of a public enemy, quarantine restriction or other effect of epidemic or disease, freight embargo, delay caused by unusually severe or extreme weather, lack of transportation attributable to any of these; or (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of an alleged violation of any prevailing wage provisions in this Agreement, if any); (iii) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

¶6.06.C A force majeure is deemed to cease for purposes of this Agreement and a party is deemed to be in breach of an obligation or cure on the earlier of (i) when it becomes possible for the obligated party to commence to perform the obligation or cure

and the obligated party fails to so commence the obligation to perform or cure, or (ii) one year from the commencement of the event of *force majeure*.

**§6.07 Default.**

Subject to §6.06, 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.

**§6.08 Notice and right to cure.**

Unless otherwise specified in this Agreement, in the event of the default, the 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.

**§6.09 Remedies and waivers.**

¶6.09.A General remedies. If the event of a default is suffered or caused by any party and not cured within the period of time specified, the 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) terminate this Agreement under §6.03; (iii) pursue any other remedy specifically provided in this Agreement, and/or (iv) bring an action for damages or equitable relief, including specific performance if warranted under the law of Nevada.

¶6.09.B Specific Remedies; arbitration.

1. If County fails to make payments due to Contractor as provided in this Agreement, Contractor, in addition to other remedies provided herein, may suspend work under this Agreement until payment is made.

2. No party is obligated to consent to or require arbitration of any disputes arising under this Agreement.

¶6.09.C Attorney's fees and 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.

¶6.09.D Remedies cumulative. 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.

¶6.09.E 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 Authorized Representative of 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. Continuing to perform under this Agreement does not constitute or imply acceptance of previous performances, defaults, or satisfaction of any disputes regarding this Agreement.

## **Article 7 GENERAL PROVISIONS.**

### **§7.01 Assignment and delegation.**

The parties agree that County may assign and delegate its rights and obligations to the Truckee River Flood Management Authority if and when it is formed by a cooperative agreement among Washoe County, the City of Reno, and the City of Sparks.

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.

### **§7.02 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.

### **§7.03 Notices; when deemed sufficiently given**

¶7.03.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.

¶7.03.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.

¶7.03.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.

#### **§7.04 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.

#### **§7.05 Applicable law; jurisdiction and venue.**

This Agreement shall be construed under and governed by the laws of the State of Nevada. Any action arising hereunder shall be brought only in the Second Judicial District Court for the State of Nevada in and for Washoe County.

#### **§7.06 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.

#### **§7.07 Severability**

¶7.07.A Each term and provision of this Agreement 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. 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.

¶7.07.B 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.

**§7.08 Modifications and amendments.**

This agreement may be modified or amended only by a writing signed by an Authorized Representative of the party to be bound by the modification or amendment as provided below.

**§7.09 Authority to execute, implement and modify.**

¶7.09.A Each person who signs this Agreement below warrants and represents that he or she has the legal capacity to enter into this agreement and if signing in a representative capacity, has obtained all approvals necessary to have 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.

¶7.09.B The “Authorized Representative” identified in Section 1 (or his/her replacement or designee) above shall have the authority to negotiate and execute all approvals or disapprovals of performance, all extensions, all waivers, all changes, modifications and amendments to this Agreement, and take all remedial actions authorized by this Agreement, except as follows:

1. If this Agreement has not been approved by the Board of County Commissioners and executed by the Chairman of the Board, the Authorized Representative of the County is not authorized to approve any change if the effect of the change would be to increase the County’s total obligation to pay money or incur liability to exceed \$100,000. Any such change must be approved by the Board of County Commissioners.

2. If this Agreement was approved by the Washoe County Board of County Commissioners, and is executed by the Chairman of the Board, the Authorized Representative of the County is NOT authorized to approve any change, modification or amendment to this Agreement if as a result of the change the County’s maximum obligation to pay money or incur liability would be increased by the greater of \$25,000 or five percent (5%) of the Maximum Contract Amount stated in Article 1 above.

**§7.10 Entire Agreement; Attachments; Counterparts.**

¶7.10.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.

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

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

EXECUTED ON THE DATES INDICATED BELOW:

**CONTRACTOR**

Manhard Consulting LTD

By \_\_\_\_\_  
Jeffrey House, P.E. Vice President

Date \_\_\_\_\_

**WASHOE COUNTY**

For the benefit of the Truckee River Flood Management Project

By \_\_\_\_\_  
David E. Humke, Chairman  
Board of County Commissioners

Date \_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
County Clerk

Date \_\_\_\_\_

Attachments:

A Insurance and Indemnification Requirements,

## INDEMNIFICATION AND INSURANCE SPECIFICATIONS

(Professional Services Contracts)

### INTRODUCTION

COUNTY has established specific indemnification, insurance, and safety requirements for professional services contracts to help assure that reasonable insurance coverage is purchased and safe working conditions are maintained. Indemnification and hold harmless clauses are intended to assure that CONTRACTOR accepts and is able to pay for the loss or liability related to its activities.

### INDEMNIFICATION AGREEMENT

#### §1.01 Indemnifications

To the fullest extent permitted by law CONTRACTOR (“**Indemnifying Party**”) shall indemnify, hold harmless and defend the COUNTY (the “**Indemnified Party**”) and its related parties from and against all costs, claims and liability arising out of or in any way connected with any act, error or omission of the Indemnifying Party or its related parties in the performance of this Agreement.

#### §1.02. Definitions.

“**Costs, Claims and Liability**” means all (i) third party claims, actions, damages, losses, judgments, injuries, settlements, 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 and (ii) reasonable costs (including salaries of employees) and expenses associated with investigation, discovery and litigation of any claim or liability, including attorney’s fees, including those paid to settle the case. “**An act, error or omission**” includes acts, errors or omissions that constitute negligence or willful tortious conduct as determined by a court of competent jurisdiction under applicable law, and further includes breaches of this agreement and/or violations of law. A “**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.

#### §1.03. Limitations and Conditions.

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. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not 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. Each indemnifying 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. Either party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement.

## INSURANCE REQUIREMENTS

### §2.00 General Requirements and Limits.

**§2.01 Minimum limits.** CONTRACTOR shall purchase and keep in force at all times during performance under this Agreement Industrial Insurance, General Liability, Automobile Liability, and Professional Insurance as described below. The cost of such insurance shall be included in the CONTRACTOR'S bid.

Type	Minimum Requirement
Industrial Insurance	As required by law. See §2.02 below.
General Liability	<p>\$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to each project or location.</p> <p><b>It is necessary for County to be named as an additional insured.</b> Cancellation notice under §2.03 b not required.</p>
Automobile	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage covering "Any Auto". No aggregate limits may apply.</p> <p><b>It is not necessary for County to be named as an additional insured.</b> Cancellation Notice under §2.03 b is not required</p>
Professional Errors and Omissions	<p>\$1,000,000</p> <p><b>It is not necessary for County to be named as an additional insured.</b> <b>Cancellation notice under §2.03 b IS required.</b></p>

### §2.02 Industrial Insurance.

a. It is understood and agreed that there shall be no Industrial Insurance coverage provided for CONTRACTOR or any Subcontractor by COUNTY. CONTRACTOR agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the COUNTY to make any payment under this Agreement to provide COUNTY with a certificate issued by an insurer in accordance with NRS 616B.627 and with certificates of an insurer showing coverage pursuant to NRS 617.210 for CONTRACTOR and all subcontractors.

b. If CONTRACTOR or Subcontractor is unlicensed and is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance. Such requirement may be waived for a sole proprietor who does not use the services of any employees, subcontractors, or independent contractors and completes an Affirmation of Compliance pursuant to NRS 616B.627(2).

c. It is further understood and agreed by and between COUNTY and CONTRACTOR that CONTRACTOR shall procure, pay for, and maintain the above mentioned industrial insurance coverage at CONTRACTOR'S sole cost and expense.

d. Should CONTRACTOR be self-funded for Industrial Insurance, CONTRACTOR shall so notify COUNTY in writing prior to the signing of this Agreement. COUNTY reserves the right to approve said retentions, and may request additional documentation, financial or otherwise, for review prior to the signing of this Agreement.

### **§2.03 Policy Requirements**

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverages

1. COUNTY, its officers, agents, employees, and volunteers are to be included as insureds as respects damages and defense arising from: activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied, or used by CONTRACTOR; or automobiles owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds nor shall the rights of the additional insureds be affected by the insured's duties after an accident or loss.

2. CONTRACTOR'S insurance coverage shall be primary insurance as respects COUNTY, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it in any way.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, agents, employees, or volunteers.

4. CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. All Coverages

Unless otherwise provided above, each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or non-renewed by

either CONTRACTOR or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to COUNTY except for nonpayment of premium.

**§2.04 Acceptability of insurers.**

a. Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. COUNTY, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONTRACTOR and insurance carrier. COUNTY reserves the right to require that CONTRACTOR'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

**§2.05 Verification of coverage**

CONTRACTOR shall furnish COUNTY with certificates of insurance and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be addressed to the specific COUNTY contracting department and be received and approved by COUNTY before work commences. COUNTY reserves the right to require complete certified copies of all required insurance policies at any time.

**§2.06 Subcontractors**

CONTRACTOR shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

**§2.07 Miscellaneous Conditions**

- a. CONTRACTOR shall be responsible for and remedy all damage or loss to any property, including property of COUNTY, caused in whole or in part by CONTRACTOR, any Subcontractor, or anyone employed, directed, or supervised by CONTRACTOR.
- b. Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Subcontractors under it.
- c.. In addition to any other remedies COUNTY may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, COUNTY may, at its sole option:
  - 1. Purchase such insurance to cover any risk for which COUNTY may be liable through the operations of CONTRACTOR under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - 2. Order CONTRACTOR to stop work under this Agreement and/or withhold any payments which become due CONTRACTOR here under until CONTRACTOR demonstrates compliance with the requirements hereof; or,

3. Terminate the Agreement.

**§2.08 Safety Program.**

- a. CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- b. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury, or loss to:
  1. All employees on the work site and all other persons who may be affected thereby.
  2. All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site.
  3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- c. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and others of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by existing conditions and progress on the work, all necessary safeguards for safety and protection, including posting danger signs, other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities. CONTRACTOR shall comply with OSHA'S Hazard Communication Standards.
- d. CONTRACTOR shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to the Owner and the Engineer.



**Truckee River Flood Project - Financial Report for August 1, 2010 - August 31, 2010**

**Fund 211-Truckee River Flood Management Infrastructure**

16.6% of year complete

	<b>Adopted Budget 2010</b>	<b>Adjusted Budget 2010</b>	<b>Actual Revenues as of 8/31/2010 *</b>	<b>% of Actual Revenues to Original Budget</b>
<b><u>Beginning Fund Balance:</u></b>	<b><u>\$22,646,769.00</u></b>	<b><u>\$23,176,979.74</u></b>	<b><u>\$23,176,979.74</u></b>	

**Revenues**

Infrastructure Sales Tax	6,072,182.00	6,072,182.00	0.00	0.00%
Interest Earnings	350,000.00	350,000.00	33,939.00	9.70%
Realized gain on investments	0.00	0.00	15,440.71	N/A
Unrealized gain on investments	0.00	0.00	36,425.46	N/A
Rental Income	67,637.00	67,637.00	12,050.00	17.82%
Miscellaneous Revenue	7,706.00	7,706.00	5,660.00	N/A
<b>TOTAL REVENUES</b>	<b><u>6,497,525.00</u></b>	<b><u>6,497,525.00</u></b>	<b><u>103,515.17</u></b>	<b><u>1.59%</u></b>

	<b>Adopted Budget 2010</b>	<b>Adjusted Budget 2010</b>	<b>Actual Expenditures as of 8/31/2010</b>	<b>% of Actual Expenditures to Budget</b>
<b>Expenditures</b>				
Salaries and Wages	1,242,789.10	1,242,789.10	137,253.82	11.04%
Employee Benefits	420,073.36	420,073.36	45,963.63	10.94%
Services & Supplies **	3,596,768.47	3,932,221.04	202,341.40	5.15%
Capital Outlay	0.00	0.00	0.00	N/A
Bond Issuance Costs	0.00	0.00	0.00	N/A
Debt Service Fees	1,500.00	1,500.00	1,500.00	100.00%
<b>TOTAL EXPENDITURES</b>	<b><u>5,261,130.93</u></b>	<b><u>5,596,583.50</u></b>	<b><u>387,058.85</u></b>	<b><u>6.92%</u></b>

	<b>Adopted Budget 2010</b>	<b>Adjusted Budget 2010</b>	<b>Actual Expenditures as of 8/31/2010</b>	<b>% of Actual to Budget</b>
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**OTHER FINANCING SOURCES & USES**

Debt to be Issued	0.00		0.00	N/A
<b>TOTAL OTHER SOURCES</b>	<b><u>0.00</u></b>		<b><u>0.00</u></b>	<b><u>0.00%</u></b>

Transfers to Debt Service	5,042,020.00	5,042,020.00	0.00	0.00%
Transfers to Infrastructure	16,500,000.00	16,500,000.00	0.00	0.00%
<b>TOTAL OTHER USES</b>	<b><u>21,542,020.00</u></b>	<b><u>21,542,020.00</u></b>	<b><u>0.00</u></b>	<b><u>0.00%</u></b>

**Fund 211 - Current Fund Balance:** **\$22,893,436.06**

**Net change in fund balance:** **(\$283,543.68)**

**Combined Fund Balance 211 and 494**

**\$25,920,053.73**

**Footnotes**

\* Infrastructure sales tax deposits lag 2 months behind

\*\* Detail for Services & Supplies on next page

**Truckee River Flood Project - Financial Report for August 1, 2010 - August 31, 2010**

Fund 211 - Services & Supplies

**16.6% of year complete**

<b>Services &amp; Supplies Detail:</b>	<b>Adjusted Budget 2011</b>	<b>Actual Expenditures</b>	<b>Actual + Encumbered</b>	<b>% of Actual + Encumbered Expenditures to Budget*</b>
Professional Services	2,484,894.94	32,215.88	320,954.94	13%
Lab Testing	72,000.00			0%
Invest Pool Alloc Ex	17,540.00	1,164.41	1,164.41	7%
Service Contract	152,555.50	3,990.60	21,557.90	14%
Repairs & Maint (for purchased properties)	51,200.00	5,466.75	25,619.25	50%
Software Maintenance	15,000.00	9,053.00	9,053.00	60%
Operating Supplies	11,000.00	238.24	238.24	2%
Special Dept. Expense (outreach)	28,000.00	1,116.00	24,116.00	86%
Copy Machine Expense	34,321.57	2,144.42	21,429.84	62%
Office Supplies	10,000.00	788.41	8,281.93	83%
Books & Subscriptions	5,300.00	315.34	315.34	6%
Postage	500.00	15.43	15.43	3%
Express Courier	1,300.00	54.92	54.92	4%
Other Expense	3,550.00	2,130.82	2,130.82	60%
Printing	8,000.00	111.50	1,000.00	13%
Licenses & Permits	1,500.00			0%
Dept Insurance Deductible	150.00			0%
Network & Data Lines	15,120.00	79.98	79.98	1%
Telephone Land Lines	4,900.00	1,379.06	1,379.06	28%
Seminars & Meetings	4,500.00	40.00	40.00	1%
Auto Expense	6,000.00	701.45	701.45	12%
Cellular Phone	3,000.00	270.07	270.07	9%
Dues	1,800.00			0%
Advertising	20,000.00			0%
Undesignated Budget	250,000.00			0%
LT Lease-Office Space	102,194.56	17,032.40	17,032.40	17%
Food Purchases	2,000.00	72.94	72.94	4%
Utilities (for purchased properties)	35,600.00	8,999.36	8,999.36	25%
Water/Sewer (for purchased properties)	21,200.00	1,105.42	1,105.42	5%
Natural Gas (for purchased properties)	33,900.00	5,383.19	5,383.19	16%
ESD Asset	360.00	120.00	120.00	33%
Equip Srv Replace	2,027.63	337.94	337.94	17%
Equip Srv O&M	2,293.28	305.80	305.80	13%
Equip Srv Motor Pool	300.00			0%
ESD Fuel Charge	2,280.00	333.44	333.44	15%
Property & Liability	100,000.00	922.16	922.16	1%
Travel	30,000.00	3,200.71	3,200.71	11%
Overhead	275,000.00	45,834.00	45,834.00	17%
Equipment Non-Capital	102,933.56	57,417.76	94,975.95	92%
Computers Non-Capital	15,000.00			0%
Computer Software Non-Capital	5,000.00			0%
<b>TOTAL SERVICES &amp; SUPPLIES</b>	<b>3,932,221.04</b>	<b>202,341.40</b>	<b>617,025.89</b>	<b>16%</b>

\* At this point in the year (16.6% complete), Actuals *and* Encumbrances total about 16% of planned budget

