



TO: Chairman and Board Members
FROM: Mark Foree, TMWA General Manager
DATE: June 30, 2011
SUBJECT: **Discussion and possible approval of a First Amendment to the Interlocal Agreement among the WRWC, TMWA and Washoe County for reimbursement of certain expenses incurred in evaluating and implementing recommendations regarding consolidation of the County's Department of Water Resources and TMWA**

RECOMMENDATION

Staff recommends that the TMWA Board approve the attached First Amendment to the Interlocal Agreement among the WRWC, TMWA and Washoe County for reimbursement of certain expenses incurred in evaluating and implementing recommendations regarding consolidation of the County's Department of Water Resources and TMWA, and if approved, authorize the Chairman to execute the agreement.

DISCUSSION

Since September 2008, TMWA and DWR staff have, at the request of the WRWC, engaged in a process including a multi-part analysis, evaluation, planning, recommendations, and preliminary implementation of integration/consolidation of the two water utilities. Certain contracted services, and considerable staff time and resources have been, and will be, required to complete these efforts. The analysis, evaluation, and recommendations are mandated by state statute, and are a required element of the Comprehensive Regional Water Management Plan (the "Plan").

The WRWC entered into a two-year Interlocal Agreement with TMWA and the County, for funding in the amount of \$550,000, to partially reimburse them for necessary integration/consolidation related costs. That Agreement expires on June 30, 2011, however, TMWA and the County will continue to incur consolidation-related costs into the next fiscal year.

In March 2011, the Northern Nevada Water Planning Commission recommended that \$300,000 be included in the WRWC budget for fiscal year 2011-2012, so that partial reimbursements of integration/consolidation related costs could be made in the coming fiscal year. The fiscal year 2011-2012 budget, including the \$300,000 described above, was approved by the WRWC on May 19, 2011. The WRWC approved this amendment at its June 10, 2011 meeting and the Washoe County Board of Commissioners approved it at their June 28, 2011 meeting.

The proposed First Amendment to the existing Interlocal Agreement provides for up to \$300,000 from the Regional Water Management Fund for reimbursement of necessary integration/consolidation related costs, including consultant costs, incurred by TMWA and the County in fiscal year 2011-2012.

FIRST AMENDMENT TO INTERLOCAL AGREEMENT

The INTERLOCAL AGREEMENT (the "Agreement"), dated May 20, 2010, entered into among the Western Regional Water Commission (the "Commission"), the Truckee Meadows Water Authority ("TMWA"), and Washoe County (the "County"), **is hereby amended by adding thereto the following subsection:**

2.10 Both TMWA and the County have requested the Commission to reimburse them for Reimbursable Expenses, as defined in subsection 2.9 above, in a collective amount not to exceed \$300,000 for the 2011/2012 fiscal year. The Commission has agreed to do so, upon the following terms and conditions.

The following subsections are hereby amended to provide as follows:

3.1.2 During the 2010/2011 and 2011/2012 fiscal years, TMWA and the County will, prior to either Party's entering into any contract in excess of \$25,000 for which either Party intends to claim Reimbursable Expenses and prior to either Party's making any payment on any existing contract which would exceed a cumulative amount in excess of \$25,000 for which either Party intends to claim Reimbursable Expenses, TMWA and the County shall jointly seek and obtain prior approval and authorization from the Commission. If prior approval and authorization is not practicable due to scheduling constraints, any such contract shall be presented to the Commission as soon as possible for ratification, and confirmation of contract payments as eligible Reimbursable Expenses.

3.1.3 During the 2010/2011 and 2011/2012 fiscal years, TMWA and the County shall, within thirty (30) days of the end of each quarter, jointly submit an itemized invoice, with detailed supporting documentation, to the Commission's contract administrator, for their

respective requested Reimbursable Expenses for the preceding quarter. The jointly submitted itemized invoice shall be agreed upon between and signed by TMWA's General Manager and the County's Director of DWR.

3.2.3 The total amount of invoices paid from the Regional Water Management Fund pursuant to the terms of this Agreement shall not exceed the sum of \$300,000 for the 2009/2010 fiscal year, \$250,000 for the 2010/2011 fiscal year, and \$300,000 for the 2011/2012 fiscal year.

The Agreement as amended to include the revisions set forth above is incorporated herein by reference, and all other terms and conditions of the Agreement shall remain in full force and effect.

This Amendment is effective July 1, 2011, regardless of the dates of execution by the Parties ("Effective Date").

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment.

Western Regional Water Commission

Truckee Meadows Water Authority

Dated this ____ day of June 2011

Dated this ____ day of _____ 2011

By _____
Mike Carrigan, Chairman
Board of Trustees

By _____
Mike Carrigan, Chairman
Board of Directors

APPROVED AS TO FORM:
Rhodes Law Offices, Ltd.

APPROVED AS TO FORM:

By _____
John B. Rhodes, Legal Counsel

Michael Pagni, Legal Counsel

Washoe County

Dated this ____ day of _____ 2011

By _____
John Breternitz, Chairman
Board of Commissioners

APPROVED AS TO FORM:

Peter C. Simeoni, Deputy District Attorney

INTERLOCAL AGREEMENT

 **COPY**

1) PARTIES

This Interlocal Agreement (“Agreement”) is entered into among the Western Regional Water Commission (the “Commission”), a Joint Powers Authority and political subdivision of the State of Nevada created pursuant Chapter 531, Statutes of Nevada 2007, the Western Regional Water Commission Act (the “Act”) and cooperative agreement under Chapter 277, Nevada Revised Statutes (“NRS”), the Truckee Meadows Water Authority (“TMWA”), a Joint Powers Authority created under Chapter 277, Nevada Revised Statutes, and Washoe County (“the County”), a political subdivision of the State of Nevada, on behalf of its Department of Water Resources (“DWR”), collectively the “Parties”, or, as context requires, “Party”. In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

2) RECITALS

2.1 The Parties are public agencies as defined in NRS 277.100(1)(a).

2.2 NRS 277.180 provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any public agency, entering into the contract, is authorized to perform.

2.3 Section 30(2) of the Act specifically authorizes the Commission to enter into agreements with the County and TMWA to accomplish the purposes of the Act.

2.4 Section 42(9) of the Act requires the Comprehensive Regional Water Management Plan to include: “Evaluation and recommendations regarding the consolidation of public purveyors in the planning area, which must include costs and benefits of consolidation, the feasibility of various consolidation options, analysis of water supplies operations, facilities, human resources, assets, liabilities, bond covenants,

and legal and financial impediments to consolidation and methods, if any for addressing such impediments.”

2.5 In furtherance of the requirements of Section 42(9) of the Act, the Commission, at its September 12, 2008 meeting, requested staff from TMWA and DWR to “Conduct a focused financial analysis to assess the feasibility of some form of utility integration using their joint bond counsel and financial advisors, Swendseid & Stern and PFM, respectively”.

2.6 After nearly a year of extensive study and review, staff presented their conclusions to the Commission. On August 14, 2009, the WRWC made a formal recommendation to the governing boards of TMWA and the County to proceed with the development of an interlocal agreement to implement the integration/consolidation of the functions of TMWA and DWR. The governing boards of both TMWA and the County subsequently approved the recommendation, and are proceeding accordingly.

2.7 Both TMWA and the County have incurred, and will continue to incur significant expense, for consulting services, and staff time and services, in the analysis, evaluation, planning, recommendations, and preliminary implementation of the requirements of Section 42(9) of the Act (the “Consolidation Process”).

2.8 The Commission has realized significant cost savings by utilizing the expertise available from the respective staff of TMWA and the County, as opposed to contracting with additional outside consultants for the required services.

2.9 Both TMWA and the County have requested the Commission to reimburse them for certain respective expenses for consulting services, and staff time and services, including the cost of benefits, that have been required and paid for, and that will be required, on an ongoing basis, directly related to the Consolidation Process (“Reimbursable Expenses”), in a collective amount not to exceed \$300,000 for the 2009/2010 fiscal year, and a collective amount not to exceed \$250,000 for the 2010/2011

fiscal year. The Commission has agreed to do so, upon the following terms and conditions.

3) **RIGHTS & DUTIES**

3.1 TMWA and the County

3.1.1 TMWA and the County shall, within forty-five (45) days of the end of the 2009/2010 fiscal year, jointly submit an itemized invoice, with detailed supporting documentation, to the Commission's contract administrator, for their respective requested Reimbursable Expenses for the 2009/2010 fiscal year. The jointly submitted itemized invoice shall be agreed upon between and signed by TMWA's General Manager and the County's Director of DWR.

3.1.2 During the 2010/2011 fiscal year, prior to either Party's entering into any contract in excess of \$25,000 for which either Party intends to claim Reimbursable Expenses and prior to either Party's making any payment on any existing contract which would exceed a cumulative amount in excess of \$25,000 for which either Party intends to claim Reimbursable Expenses, TMWA and the County shall jointly seek and obtain prior approval and authorization from the Commission. If prior approval and authorization is not practicable due to scheduling constraints, any such contract shall be presented to the Commission as soon as possible for ratification, and confirmation of contract payments as eligible Reimbursable Expenses.

3.1.3 During the 2010/2011 fiscal year, TMWA and the County shall, within thirty (30) days of the end of each quarter, jointly submit an itemized invoice, with detailed supporting documentation, to the Commission's contract administrator, for their respective requested Reimbursable Expenses for the preceding quarter. The jointly submitted itemized invoice shall be agreed upon between and signed by TMWA's General Manager the County's Director of DWR.

3.1.4 TMWA and the County shall, through their respective designated representatives or contract administrators, provide to the Commission any information requested by the Commission's contract administrator, relating to any invoice submitted for payment. TMWA's and the County's respective designated representatives or contract administrators shall keep the Commission's contract administrator reasonably advised as to the status of the Consolidation Process at all times.

3.1.5 To the extent authorized by Nevada law, TMWA and the County shall save, hold harmless, defend, and indemnify the Commission from and against any and all claims and liability arising out of the activities for which expenses are reimbursed.

3.2 The Commission

3.2.1 The Commission's Water Resources Program Manager is hereby designated as the Commission's contract administrator.

3.2.2 Upon the submission of an invoice for payment, pursuant to Section 3.1 above, the Commission's contract administrator will promptly review the invoice, request any further information or documentation required, and process the invoice for payment within thirty (30) days following his approval.

3.2.3 The total amount of invoices paid from the Regional Water Management Fund pursuant to the terms of this Agreement shall not exceed the sum of \$300,000 for the 2009/2010 fiscal year, and \$250,000 for the 2010/2011 fiscal year.

3.3 Joint Rights and Responsibilities

3.3.1 Any Party may terminate this Agreement with thirty (30) days advance written notice to the other Parties.

3.3.2 The Parties agree to coordinate and use their best efforts to complete the Consolidation Process and to collaborate in a timely manner in order to maximize the efficient use of funding and other resources.

4) **MISCELLANEOUS PROVISIONS**

4.1 This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, estates, personal representatives, successors and assigns.

4.2 This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada.

4.3 This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

4.4 This Agreement may not be modified, or amended in any respect, except pursuant to an instrument in writing duly executed by the Parties.

4.5 In the event the Commission fails to appropriate or budget funds for the purposes as specified in this Agreement, TMWA and the County hereby consent to the termination of this Agreement. In such event, the Commission shall notify TMWA and the County in writing and the Agreement shall terminate on the date specified in the notice. The Parties understand that this funding out provision is required under NRS 244.320 and NRS 354.626.

4.6 In the event any Party brings any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the prevailing Party or Parties in such action or proceeding shall be entitled to recover all reasonable costs of litigation, including reasonable attorneys' fees.

4.7 No delay or omission by either Party in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the person granting such waiver. A waiver by any Party of any of the covenants, conditions, or

agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreement, restrictions or conditions hereof.

4.8 All notices, demands or other communications required or permitted to be given in connection with this Agreement, shall be in writing, and shall be deemed delivered when personally delivered to a Party (by personal delivery to an officer or authorized representative of a corporate Party) or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the Parties as follows:

To Commission: Jim Smitherman, Water Resources Program Manager
Western Regional Water Commission
4930 Energy Way
Reno, NV 89502

To TMWA: Mark Foree, General Manager
1355 Capital Blvd.
Reno, NV 89502

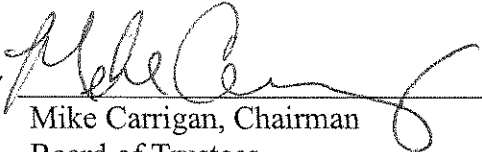
To County: Rosemary Menard, Director
Department of Water Resources
4930 Energy Way
Reno, NV 89502

4.9 This Agreement shall be effective May 20, 2010 ("Effective Date"), regardless of the date each Party signs it.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Western Regional Water Commission

Dated this 20th day of May 2010


By 
Mike Carrigan, Chairman
Board of Trustees

Truckee Meadows Water Authority

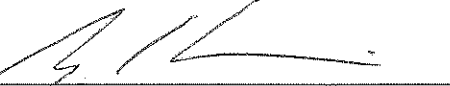
Dated this 20th day of May 2010

By 
Mike Carrigan, Chairman
Board of Trustees

APPROVED AS TO FORM:
Rhodes Law Offices, Ltd.

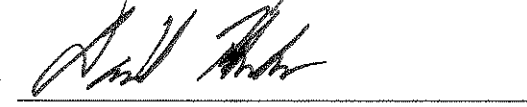
By 
John B. Rhodes, Legal Counsel

APPROVED AS TO FORM:


Sylvia Harrison, Legal Counsel

Washoe County

Dated this 22nd day of June 2010

By 
David Humke, Chair
Board of Commissioners

APPROVED AS TO FORM:


Peter C. Simeoni, Deputy District Attorney