



STAFF REPORT

TO: Board of Directors
THRU: Mark Foree, General Manager
FROM: Juan Esparza, Principal Engineer
Sylvia Harrison
DATE: September 4, 2015
SUBJECT: **Request for Board approval of an Interlocal Agreement between the City of Reno, Washoe County and TMWA for the funding, construction and long-term maintenance of drainage improvements in the Mesa Park area of northwest Reno**

RECOMMENDATION

Staff recommends that the Board approve the Interlocal Agreement (ILA) for the work associated with the storm drainage improvement for the Mesa Park area and authorize the General Manager to execute the Agreement, on behalf of Truckee Meadows Water Authority (TMWA), in order to move forward with the project. The final draft ILA is attached.

DISCUSSION

TMWA owns and operates a municipal water supply canal in the Mesa Park area of northwest Reno. This canal is the primary raw water delivery system of Truckee River water to TMWA's Chalk Bluff Water Treatment Facility. Over the past few years TMWA has completed numerous major improvements to Highland Canal System to increase capacity and reliability. However, even with completion of these improvements, TMWA has long observed that storm water run-off from the Mesa Park/I-80 complex enters the canal increasing the likelihood of organic and microbiological contamination of the canal and disruption of treatment at the Chalk Bluff Plant.

TMWA has been seeking a solution to the problem by working with jurisdictional agencies having responsibility for storm water control. Through grant funding from the Truckee River Fund and the Western Regional Water Commission (WRWC), the City of Reno and TMWA's consultant (AMEC/FosterWheeler) evaluated various collection and conveyance alternatives and have prepared a design package intended to address these issues.

The project entails the installation of a storm water collection and conveyance system to transport surface drainage from the Mesa Parke/I-80 complex to the Truckee River. The Truckee River terminus includes an environmentally sensitive outfall structure. The drainage collection

area will include drainage from the Burkes Drive area and drainage from V-ditches emanating from Thomas Drive and Eleanor Drive. An additional critical sub-component is the installation of a small collection and conveyance system designed to intercept, percolate and transport drainage from livestock pens in close proximity to the canal. TMWA has acquired property to install this system.

Since TMWA is precluded from constructing storm water collection improvements, the ILA presents the framework, through which, TMWA will be able to complete design of the project and provide bid documents to the City of Reno for construction.

As outlined in the ILA, the City of Reno has obtained approximately \$979,000 in grant funding for the work. The Engineer's estimate, based on 90% level design documents, is approximately \$1,779,000. As per Articles III and IV of the ILA, TMWA agrees to provide funding for the difference between the amount of the City's current grant funding and the Engineer's estimate. Should the bid proposals, received by the City (via a competitive bid process), exceed the Engineer's estimate, TMWA will make a final determination as to whether or not it will obligate funding to cover this exceedance.

INTERLOCAL AGREEMENT FOR THE
CONSTRUCTION AND MANAGEMENT
OF STORMWATER FACILITIES
FOR THE PROTECTION OF THE HIGHLAND CANAL

This Interlocal Agreement (the “Agreement”) is by and among Washoe County, the City of Reno (“COR”), the Truckee Meadows Water Authority (“TMWA”), each a “Party” and collectively, the “Parties.”

RECITALS

- A. NRS 277.180 provides that public agencies may contract with other public agencies to perform any governmental service, activity or undertaking which any of these public agencies entering into the contract is authorized by law to perform;
- B. TMWA is a Joint Powers Authority created through a Cooperative Agreement among the cities of Reno, Sparks, and Washoe County, Nevada;
- C. TMWA is the principal municipal water supplier for the Reno-Sparks area;
- D. TMWA operates a canal, the Highland Canal, which is the primary conduit of Truckee River water to TMWA’s Chalk Bluff Water Treatment Plant;
- E. TMWA has improved the Highland Canal such that it provides a continuous supply of surface water for treatment and provides the most reliable and least expensive source of surface water to the Chalk Bluff Plant for treatment;
- F. Washoe County and COR have jurisdiction over the management of Storm water discharges from certain developments upslope of the Highland Canal;
- G. Protection of the community’s drinking water supply is a goal shared by TMWA, COR and Washoe County;
- H. The Parties desire to cooperate in the design and construction of infrastructure improvements to alleviate discharges of stormwater affecting the Highland Canal and mitigate the impacts of stormwater discharges to the Truckee River and in the future operations and maintenance of these improvements;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I
CONDITIONS PRECEDENT

- 1.1. *Effective Date:* This Agreement requires the approval of the governing boards of each Party, and shall become effective on the date last approved by a governing board of a Party.

1.2 *Source of Funds:* The Parties acknowledge that performance of their respective obligations hereunder is dependent in part on securing of funding from outside sources and is limited by the provisions of NRS 354.470-626.

ARTICLE II PURPOSE, SCOPE, AND ADMINISTRATION

2.1. *Purpose.* The purpose of this Agreement is set forth the terms and conditions governing the Parties' cooperative design, construction, and maintenance of certain infrastructure improvements for the interception, collection, and conveyance of storm water runoff from the Mesa Park areas of Reno and Washoe County to prevent discharges into the Highland Canal and redirect storm water to the Truckee River. Currently storm water enters TMWA's Highland Canal at several locations in this area. The improvements will consist of the installation of a collection and conveyance system with features designed to eliminate stormwater discharges into the Highland Canal and to improve stormwater quality prior to entry into the Truckee River. The project will require crossings of TMWA's Highland Canal, U.S. 40 (NDOT) and railroad (Union Pacific).

2.2. *Additional Improvements.* The Parties acknowledge that the Improvements are intended to control the majority of storm water runoff impacting the Highland Canal, but that additional improvements may be necessary in the future. Any such additional improvements are outside the scope of this Agreement, unless this Agreement is amended to include such additional work with an approved source of funds.

2.3. *Responsible Persons.* The person responsible for the administration of this Agreement on behalf of TMWA is Juan Esparza. The person responsible for the administration of this Agreement on behalf of the COR is Glen Daily. The person responsible for the administration of this Agreement on behalf of Washoe County is Dwayne Smith.

2.4 *Term.* This Agreement shall be binding upon the Parties, their successors, and assigns, and shall continue in full force and effect until issuance of final payments under this Agreement to Contractor and all warranty requirements have been fulfilled as required by the construction contract documents.

ARTICLE III DESIGN AND BUDGET ESTIMATE

3.1. TMWA and its contractor have substantially completed design for the Improvements and will prepare the final design. The 30% design included participation by COR and Washoe County via a technical advisory committee. TMWA agrees to be responsible for all design costs, other than the cost of design review by COR and Washoe County.

3.2. *Design Review.* COR and Washoe County will each review the final design to ensure compliance with their respective specifications and ordinances and agree to approve or provide

comments to the final design no later than 14 business days following receipt from TMWA of the final design.

3.3. *Budget and Grant Funding.* A budget estimate has been prepared as set forth in Exhibit A (the “Preliminary Budget Estimate”). The Parties have obtained grant funding in the amount of \$979,000.00 (Truckee River Fund of \$729,000.00 and NNWPC of \$250,000.00) for a portion of the cost of construction based upon the Preliminary Budget Estimate, exclusive of the design and permitting costs that TMWA has agreed to bear. Subject to Section 4.1, TMWA agrees to provide funding for the difference between the amount of grant funding and the Preliminary Budget Estimate. The Parties acknowledge that actual project costs will be based upon bids received and the final selected bid, as set forth in Section 4.1.

ARTICLE IV CONSTRUCTION RESPONSIBILITIES

4.1. *Construction Management.* COR shall be responsible for construction management, at COR’s cost, including procuring construction permits, preparation of construction contracts, securing bids, managing contractor selection, and on-site inspection. COR shall manage the bid process in accordance with its standard procedures and shall award the contract to the contractor providing the lowest responsive and responsible bid (the “Contractor”), provided the bid does not exceed the Preliminary Budget Estimate. In the event the lowest responsive and responsible bid exceeds the Preliminary Budget Estimate, COR shall consult with TMWA regarding the proposed contract price. TMWA may either agree or decline to provide funds sufficient to pay the difference between the lowest responsive and responsible bid and the Preliminary Budget Estimate. If TMWA declines to commit funds for the additional amount, the project will not proceed for lack of funds and the COR will cancel the project bids. If this occurs, the Parties shall convene to determine whether to delay or redesign the project or terminate this Agreement.

4.2 *Change Orders.* TMWA and Washoe County or their authorized agents shall have the right to review and approve contract change order requirements related to the construction of the project and COR shall not execute or approve change orders or other modifications to the project work without the prior written approval from TMWA and Washoe County or their authorized agents. TMWA and Washoe County shall provide COR with their approval and/or comments to any proposed change order relating to the project within 5 calendar days of notice given pursuant to this Agreement.

4.3 *Contract Payments.* Payments to contractor shall be made first from available grant funds and thereafter from funds committed by TMWA. If payment is to be made by TMWA, City shall submit contractor’s invoices to TMWA for the authorized costs of constructing the project. Contractor’s invoices for change order work shall include supporting documentation reasonably acceptable to TMWA. Payment of all invoices properly submitted shall be due within 30 days after receipt by TMWA directly to contractor, provided, however, that final payment for the project shall be contingent upon satisfactory final inspection and approval of the project by the Parties and proper filing and processing of the Notice of Completion.

4.4. *Access.* Washoe County and COR agree to provide necessary access within their respective jurisdictions for construction of the Improvements. TMWA will be responsible for the procurement of permits or licenses on behalf of COR for Nevada Department of Transportation (“NDOT”) and railroad crossings and for acquiring, at its cost, any necessary easements for the Improvements.

TMWA shall, at its own expense and at no cost to Washoe County and COR, acquire or provide all easements necessary for construction, operation, maintenance, repair, and replacement the Improvements.

4.5. *Fees.* TMWA will not be responsible for any fees for permit, street cut, document review, inspection, and similar fees for construction of the Improvements.

4.6. *Construction Permits.* COR agrees to procure, or cause Contractor to procure, all required construction permits such as surface disturbance and storm water construction discharge permits at no cost to TMWA.

4.7. *Submission and Payment of Invoices.* COR agrees to be responsible for direct payment of invoices to Contractor.

4.8. *Construction Status Meetings.* COR agrees to convene periodic construction status meetings with the responsible persons designated by Washoe County and TMWA, at least bi-weekly during project construction.

4.9. *Inspections .* During construction, COR and Washoe County shall each perform inspections of Improvements within their respective jurisdiction and TMWA shall have the right to inspect Improvements and to request modifications. COR shall perform the final inspection of the Improvements in their jurisdiction and Washoe County shall perform the final inspection of the Improvements in their jurisdiction.

4.10. *Ownership of Improvements.* The completed Improvements will be owned by either COR or Washoe County, dependent upon the Party in whose jurisdiction the Improvement is located.

ARTICLE V OPERATION AND MAINTENANCE

5.1. *Maintenance.* Following completion of the Improvements, COR and Washoe County agree to assume responsibility for the maintenance and repair of Improvements within their respective jurisdictions.

5.2. *Discharge Permits.* COR and Washoe County will be responsible for application for and maintenance of any discharge permits necessary for the operation of the Improvements, including without limitation, any required permits for the outfalls to the Truckee River and for detention basins.

ARTICLE VI
MUTUAL INDEMNITIES AND LIMITATIONS

6.1. To the fullest extent permitted by law, each Party shall indemnify, hold harmless and defend the other Parties from and against any and all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising in whole or in part out of any alleged negligent or willful acts or omissions of the indemnifying Party, its officers, employees and agents, related to this Agreement, excepting any liability arising out of the negligence or willful acts or omissions of the indemnified Parties.

6.2. Notwithstanding the foregoing, no Party waives available NRS Chapter 41 liability limitations and other liability limitations available at law in all cases.

6.3. No Party shall assume any liability or the direct payment of any salary, wages, or other compensation to any other of the Parties' personnel performing services hereunder or for any other liability not expressly assumed herein.

ARTICLE VII
MISCELLANEOUS PROVISIONS

7.1. *Further Assurances.* The parties shall execute and deliver such further documents, agreements, instruments and notices and shall take such other actions as may be necessary or appropriate to effectuate the intent and purpose of this Agreement.

7.2. *Assignment; Binding Effect.* This Agreement shall not be assigned without the written approval of the governing boards of the Parties.

7.3. *Waiver.* The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

7.4. *Entire Agreement; Modification.* This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. This Agreement may not be amended, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the Party against which such amendment is to be charged.

7.5. *Governing Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada.

7.6. *Headings.* The headings which appear at the commencement of each section are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between any heading and the section itself, the section itself and not the heading shall control as to construction.

7.7. *Force Majeure.* No Party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, third party or governmental challenges or lawsuits, government regulations, refusal or delay by a governmental entity to issue any needed permit, strikes, work stoppages, labor unrest, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

7.8. *Retention of Records.* Except as provided herein, all records pertaining to work carried out under this Agreement shall be retained pursuant to COR and Washoe County's record retention policies and in accordance with the Nevada Public Records Act, NRS 239.010, et. seq. All such material shall be available to the other party and their respective auditors at any reasonable time and upon reasonable notice for purposes of auditing, inspecting and copying.

7.9. *Survival.* The representations, warranties, indemnities and waivers set forth in this Agreement, and provisions relating to payments and record retention, shall survive the termination, for any reason whatsoever, of the Agreement.

7.10. *No Third-Party Rights.* The parties expressly disclaim the creation of any right in any third party whatsoever under this Agreement. There are no third-party beneficiaries.

7.11. *Legal Relations.* No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

7.12. *Severability.* If any section, paragraph, sentence or clause of this Agreement or any Work Order executed pursuant hereto is declared by a court of competent jurisdiction to be unenforceable or void by reason of public policy or otherwise, then the remaining provisions of such agreement shall nonetheless remain in force to the fullest extent permitted by law.

7.13. *Dispute Resolution.* The parties hereby acknowledge and agree that this Agreement shall be governed, construed and enforced under the laws of the State of Nevada. The parties hereby consent to exclusive venue in Washoe County, Nevada. Any dispute under this Agreement shall be submitted first to mutually agreeable informal dispute resolution before instituting any legal Action.

Should either party hereto institute a legal action or dispute resolution proceeding of any kind to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, neither party shall be entitled to recover any amount as a reasonable attorney's

fee, for any reason, even if said party is deemed to be the prevailing party in such action or proceeding. Costs of suit may be awarded as allowed by law.

7.14. *Notices.* All notices, invoices, and payments required to be delivered pursuant to the Agreement shall be delivered to the persons and addresses set forth in Exhibit B.

IN WITNESS WHEREOF, the parties hereto have duly executed this Interlocal Agreement as of the below.

CITY OF RENO

ATTEST:

Hillary Schieve, Mayor

Reno City Clerk

Approved as to Form:

Susan Ball Rothe
Deputy City Attorney

Date: _____

TRUCKEE MEADOWS WATER AUTHORITY

Chairman, Board of Trustees

Date: _____

WASHOE COUNTY:

By: _____
Marsha Berkbigler, Chair
Washoe County Commission

Date _____

ATTEST:

By: _____
Nancy Parent, County Clerk

Date _____

Exhibit "A"

<u>HIGHLAND CANAL STORM DRAIN PROJECT FUNDING</u>		
<u>PROJECT FUNDING SOURCE</u>	<u>PROJECT FUNDING</u>	<u>TMWA CONSTRUCTION COST ESTIMATE</u>
TRUCKEE RIVER FUND GRANT <i>(approved July 2013)</i>	\$400,000	<u>\$2,045,632</u> <i>(TMWA 100% cost estimate \$1,778,810 plus 15% force account)</i>
NORTHERN NEVADA WATER PLANNING COMMISSION FUND GRANT <i>(approved March 2014)</i>	\$250,000	
TRUCKEE RIVER FUND GRANT <i>(approved September 2014)</i>	\$329,000	
<u>SUB-TOTAL APPROVED PROJECT GRANT FUNDING</u>	<u>\$979,000</u>	
PROJECTED TMWA FUNDING <i>(difference between TMWA construction cost estimate & approved grant funding)</i>	<u>\$1,066,632</u>	

Exhibit "B"

<u>HIGHLAND CANAL STORM DRAIN DISTRIBUTION LIST FOR PROJECT NOTICES AND INVOICES</u>		
NAME/AGENCY	Address	Phone/E-mail
<i>Juan Esparza, P.E. Truckee Meadows Water Authority</i>	<i>1355 Capital Blvd. Reno, NV 89502</i>	<i>(775) 834-8041/ jesparza@tmwa.net</i>
<i>Glen Daily, P.E. City Of Reno Public Works Dept.</i>	<i>P.O. Box 1900 Reno, NV 89505</i>	<i>(775) 334-2206/ dailyg@reno.gov</i>
<i>Walt West, P.E. Washoe County Community Services Dept., Engineering and Capital Projects Division</i>	<i>1001 E. Ninth St., Bldg. A Reno, NV 89520</i>	<i>(775) 328-2338/ wwest@washoecounty.us</i>