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Summary of Key Provisions
for the
Interlocal Cooperative Agreement
(Truckee River Flood Management Project)

Topic	Terms	Reference
PARTIES TO AGREEMENT; DEFINITIONS		
<i>Parties</i>	<ul style="list-style-type: none">• “Members” are Washoe County, City of Reno, and City of Sparks.• “Authority” will join the agreement after it becomes organized in order to accept the responsibilities and set its indemnifications to the Members.	§1.01
<i>Key Definitions</i>	Definitions to capitalized terms in Agreement are in §1.02. For this Outline: <ul style="list-style-type: none">• PPA is Project Partnership Agreement with U.S. Army Corps of Engineers.• Flood Management Facilities includes all flood damage control facilities (levees, floodwalls etc), ecosystem restoration facilities and recreational facilities acquired or constructed by Authority.	§1.02
ESTABLISHMENT OF JOINT POWERS AUTHORITY		
<i>Creation</i>	Truckee River Flood Management Authority created to manage and control the Truckee River Flood Management Project.	¶3.01.A
<i>Nature of Organization</i>	<ul style="list-style-type: none">• Political subdivision of Nevada• Separate entity created by interlocal agreement• Draws all of its powers by delegation from the Members. Such as powers to contract, own property, use eminent domain, adopt by-laws, employ persons, purchase goods, purchase insurance, etc• Debts and obligations separate from Members• Not an agent of Members, and visa versa• Members may not be assessed to pay debts of Authority• Permanent entity until dissolved by Members or court• Boundaries are all of Washoe County• Will be a separate “local government” under NRS Chapter 354 and prepare its own budget, keep its own accounts, and do its own audits.	¶3.01.C ¶3.01.A ¶3.02.B ¶3.01.C ¶3.01.C ¶3.01.C ¶3.01.D ¶3.01.E ¶3.08.A

<p>Governing Body</p>	<ul style="list-style-type: none"> • Board of Directors • 6 Directors, 2 appointed by each Member See Note [1] below • Directors must be elected officials of Members • Directors serve 2 year terms unless sooner removed by Member; may serve more than one term. • Alternate Directors may be appointed • Staggered terms • Meetings covered by Open Meeting Law • Rules of Procedure for meetings to be established. • Directors, officers and employees to be indemnified <p>Note [1] An alternative would be to apportion seats on the Board based on the financial contribution of the Members.</p>	<p>¶3.03.A ¶3.03.B ¶3.03.B ¶3.03.B ¶3.03.B ¶3.03.B ¶3.04.D ¶3.04.E ¶3.06.C</p>
<p>Quorum & Voting Requirements</p>	<ul style="list-style-type: none"> • Quorum is majority (4 of 6) of all Directors. NRS 241.0355 regarding voting requirements and counting of abstentions applies. <p>➤ At least 50% (4) of Directors must approve everything except as provided below. (Such as approve contracts, purchase and sell property, approve reports etc)</p> <p>➤ At least 75% (5) of Directors must approve:</p> <ul style="list-style-type: none"> • Budgets and Capital Improvement Plans (which must first be presented to Member governing bodies for consultation before the Board takes action). • Living River Plan and amendments • Rates and Charges • Borrow money; Financing Agreements; Debt Instruments • By-Laws of Authority; regulations and policy statements. <p>➤ At least 75% (5) of Directors and the governing body of each Affected Member must approve:</p> <ul style="list-style-type: none"> • Master Plans and regulatory measures for inclusion in the affected Member’s Development Codes • Establishment of a Special District (Impact Fee Service Area. Local Improvement District etc) within the jurisdiction of the Member <p>➤ At least 75% (5) of Directors and the governing bodies of all Members must approve:</p> <ul style="list-style-type: none"> • Amendment, modification, termination of Agreement • Withdrawal of a Member • Merger or combination with another entity • Dissolution of Authority 	<p>¶3.05.A ¶3.05.B ¶3.05.B ¶3.05.B ¶3.05.B §5.01 ¶6.03.B ¶3.05.B</p>

<i>Board Officers, Committees,</i>	<ul style="list-style-type: none"> • Board Committees to be established in By-Laws • Board Officers will be Chair and Vice Chair (who must be Directors) as will be established in By-Laws 	<p>¶3.06.B ¶3.06.A</p>
<i>Withdrawal of a Member</i>	<ul style="list-style-type: none"> • Only by agreement approved by governing bodies of all Members. Agreement must not impair collection and pledge of revenues (until existing Debt Instruments are paid in full), any covenant in outstanding Debt Instrument or financing agreement, continuing construction of the project, or Authority’s obligation under the PPA. Agreement must provide for payment or reduction of existing Debt Instruments; preserve integrity of all facilities in project; and provide for continued operation and maintenance of facilities within the withdrawing Member’s jurisdiction. 	<p>§3.09</p>
<i>Dissolution of Authority</i>	<ul style="list-style-type: none"> • Must be approved by all Members or a court. Agreement to dissolve must provide for repayment and performance of all obligations in Debt Instruments and agreements of Authority, including any agreements with federal agencies. • On dissolution, all of the conferred functions and powers delegated to the Authority by the Members (including rate making and regulatory powers), and all of the revenues and assets of the Authority shall be <ul style="list-style-type: none"> ○ distributed to any Member who agrees to assume all responsibilities of the Authority and continue the project; ○ but if no Member so agrees, then <i>may</i> be sold or conveyed to another public agency, except that all functions and powers delegated to the Authority are terminated and any Member may delegate such functions and powers to the new entity in an agreement; or ○ The Authority will be liquidated as follows: <ul style="list-style-type: none"> ○ All functions conferred and powers delegated to Authority are terminated; ○ Flood Management Facilities will be conveyed to the Member in whose jurisdiction where located, ○ Centralized assets will be liquidated and after payment of debts and obligations, (a) to the extent federal funds were used to buy the liquidated assets, proceeds will be distributed in accordance with federal law, (b) the balance in Infrastructure Fund goes back to Washoe County to be used only as authorized in NRS Chapter 377B, as amended and (c) all remaining cash will be 	<p>¶3.10.A ¶3.10.B</p>

<i>Director, Employees, & Counsel of Authority</i>	<ul style="list-style-type: none"> • Director is chief executive officer of Authority who will serve at pleasure of the Board. Duties to be established by resolution. Director will be administratively attached to Washoe County for payroll and benefits. • Employees will be employees of Washoe County, subject to all regulations and collective bargaining agreements of County, with same status as if Authority were a department and director were a department head of the County. • Authority may hire counsel. 	<p>¶3.07.A ¶8.02.A ¶3.07.B ¶8.02.C ¶3.07.C</p>
FUNCTIONS AND POWERS OF AUTHORITY (See ¶3.02.A and ¶3.02.B for complete list of all functions conferred and powers delegated.)		
<i>Plan and Construct Project</i>	<p><i>The Authority:</i></p> <ul style="list-style-type: none"> • Shall develop Facilities Plans • Shall develop annual Capital Improvement Plans which must be approved as provided in ¶3.05.B ; • Shall enter into and administer PPA with Corps; • Shall complete all reports and agreements for federal funding; • May enter into TRAction project agreements and construct TRAction facilities; • Shall acquire all property needed for project unless otherwise agreed; • As funds become available, shall plan, schedule, and enter contracts for construction of projects in accordance with PPA and the Capital Improvements Plans. • May approve additional features or designs that exceed PPA requirements if requested by a Member <p>➤ Except as specified in the PPA, Flood Management Facilities may be designed, approved and constructed by the Authority.</p>	<p>¶5.01.A ¶5.01.C ¶5.02.A §4.08. ¶5.02.B §5.04 ¶5.05C. ¶5.05.A ¶5.03.B ¶5.03.A ¶5.05.C</p>
<i>Own, Operate and Maintain Project</i>	<ul style="list-style-type: none"> • Before soliciting bids or entering into agreements for construction, Authority shall determine who will own, operate and maintain each Flood Management Facility and enter into appropriate agreements. • Unless otherwise agreed, Authority will own all Flood Management Facilities. • Authority has exclusive control and responsibility for operation and maintenance of Flood Management Facilities. • If a Member desires to operate and maintain a Facility in its jurisdiction, Authority will enter into agreement with 	<p>¶5.05.B ¶5.06.A ¶5.07.A ¶5.07.E</p>

<i>Repairs and Replacement</i>	<p>Member to perform operations, maintenance and repair services with funding to be provided by Authority.</p> <ul style="list-style-type: none"> • Authority must prepare and keep current maintenance and monitoring plans approved by USACE and FEMA and must periodically inspect • Authority exclusive agency to respond to Corps inquiries and instructions; Members performing maintenance on Facilities agree to comply with Corps instructions. • Members reserve emergency powers to deal with Flood Management Facilities during natural disaster, including excluding all others from facility regardless of ownership. • Authority shall provide for repair and replacement of all Flood Management Facilities, establishing reserves and purchasing insurance. 	<p>¶5.07.B ¶5.07.C ¶5.07.D ¶5.07.E ¶5.07.G §5.08</p>
<i>Emergency Powers</i>	<ul style="list-style-type: none"> • Authority to operate Early Warning System • Authority has <ul style="list-style-type: none"> ○ emergency planning powers to make recommendations to include in emergency management plans; ○ emergency operational powers except no police power and power is subordinate to Members; ○ duty to operate flood warning system; ○ power to enter into emergency management agreements. 	<p>¶5.09.A ¶4.07.D §4.07</p>
<i>Regulatory Powers</i>	<p>The Authority has regulatory powers over the flow of flood waters through the Truckee River and its Key Tributaries as follows:</p> <p><u>Flood Management Facilities Planning</u></p> <ul style="list-style-type: none"> • designing and scheduling construction of Flood Management Facilities (levees, floodwalls, riverbank terracing, ecosystem restoration etc) to control floodwaters through the Reno-Sparks area to be naturally dissipated downstream. <p><u>Regulatory Planning.</u></p> <ul style="list-style-type: none"> • recommending proposed plans and regulatory measures (which must at least conform to minimum requirements in existing Development Codes) to protect the Flood Management Facilities and mitigate the adverse impact that new development may have on flooding and on the level of protection the facilities are designed to provide. The plans and regulatory measures will be drafted with the 	<p> §4.03 ¶4.05.A</p>

	<p>planning staffs of Members and proposed, as appropriate, to Members for approval and inclusion in their Development Codes, such approval being in the sole legislative discretion of the Members governing bodies. If a Member does not approve the proposed plans and regulatory measures, the Board will consider what was approved and may take appropriate action to protect Flood Management Facilities and prevent breach of the PPA. (See Note [1] below.</p> <ul style="list-style-type: none"> • preparing (in cooperation with Member planning staffs) and submitting floodplain management and flood control plans to the Northern Nevada Water Planning Commission for inclusion in the Comprehensive Plan; (See Note [2] below). • preparing and submitting to the Regional Planning Commission information required by NRS 278.0274 (2) and NRS 278.0274 (5) to be included in regional master plans. <p>➤ Note [1] Members’ Development Codes must provide that (i) before a land use designation in the Member’s master plan or a zoning district is amended or changed, the Authority shall be consulted and make recommendations; and (ii) certain projects will be referred by planning staffs to the Authority for review and determination of potential flood impact and impact on Flood Management Facilities and make recommendations. But master plan decisions and decisions to approve projects are made by planning commissions and governing bodies. If Authority fails to make written comments on time, matter will proceed to planning commission, and if Authority does not make written comments or appear at planning commission, it waives the right to comment.</p> <p>➤ Note [2] Members agree to request that a representative of the Authority be appointed to be a non-voting member of the Northern Nevada Water Planning Commission.</p>	<p>¶4.05.C</p> <p>§4.04</p> <p>§4.06</p> <p>¶4.05.B.2</p> <p>¶4.05.B.3</p> <p>¶4.04.E</p>
	<p><u>Flood Impact Analysis.</u></p> <ul style="list-style-type: none"> • establishing a procedure and process to measure the possible impact of land uses and development projects on the Flood Management Facilities. 	<p>§4.02</p>
	<p><u>Regulations regarding Internal Operations and Property</u></p>	<p>§4.10</p>

	<ul style="list-style-type: none"> Enacting and enforcing policies and regulations regarding internal operating procedures and the use, operation and maintenance of properties (including easements) owned by the Authority. 	
PROJECT FINANCING		
<i>Ratemaking Powers</i>	<ul style="list-style-type: none"> Subject to provisions regarding withdrawal of a Member, and dissolution of Authority, Members irrevocably delegate to Authority the powers they have under SB 175 to impose and collect rates and fees to generate revenues to pay for acquisition, operation and maintenance of Flood Project. Rate resolution of Authority must provide for fee adjustment mechanisms and relief in extreme hardships. Rates and fees must be uniform between Member jurisdictions. Judicial confirmation required. 	§6.01
<i>Infrastructure Tax Plan powers</i>	<ul style="list-style-type: none"> Reserving statutory powers and responsibilities to collect and administer the Infrastructure Tax (1/8 % sales tax), County irrevocably pledges and agrees to pay to Authority the Infrastructure Fund Flood Project Net Revenues (funds available after honoring all pledges and paying debt service and reserves on existing obligations of County). County delegates to Authority the power to change the Infrastructure Tax Plan with respect to flood project. If County believes Authority is violating the law with respect to delegated powers, it may bring lawsuit. 	¶6.02.A ¶6.02.B ¶6.02.D ¶6.02.C ¶6.02.E
<i>Other Revenue Powers</i>	<ul style="list-style-type: none"> Authority has powers to accept loans and grants, cost sharing arrangements. 	¶6.03.A
<i>Special Districts</i>	<ul style="list-style-type: none"> Authority can establish Special Districts (Impact Fee Service Areas, General Improvement Districts, Local Improvement Districts etc) with Member consent. 	¶6.03.B
<i>Expenditure of Project Revenues and Financing Flood Facilities</i>	<ul style="list-style-type: none"> Authority can expend Project Revenues for Project and can borrow money and issue Debt Instruments (bonds etc) or enter into financing agreements with others who will issue Debt Instruments. 	§6.04 §6.05
<i>Floodproofing Financial Assistance</i>	<ul style="list-style-type: none"> Washoe County delegates power to provide financial assistance to owners of public and private properties in areas that are likely to be flooded in order to make such property resistant to flood damage in accordance with Section 3 of AB 54. 	¶3.02.A.vii
RIGHTS AND OBLIGATIONS OF MEMBERS		
<i>Insurance and Indemnifications</i>	<ul style="list-style-type: none"> Authority must maintain insurance, and must name Members as additional insureds on general liability policies. Members will indemnify, hold harmless and defend 	¶7.02.A ¶7.02.B

	<p>Authority from liability arising out of acts, errors and omissions of Members.</p> <ul style="list-style-type: none"> • Authority will indemnify, hold harmless and defend Members from liability arising out of location, design, construction, condition, failure, and use of Facilities; errors and omissions of Authority; and “takings” liability. 	¶7.02.C
Washoe County	<ul style="list-style-type: none"> • County to convey property, contracts, funds, Books records and documents acquired for the flood project within 90 days. • County agrees to various provisions regarding County employees who work for Authority; Authority agrees to reimburse County. 	<p>§8.01</p> <p>§8.02</p>
City of Reno	<ul style="list-style-type: none"> • Reno to convey property needed for flood project. • TRAction and other contracts Reno has with County relating to the Truckee River Flood Management Project transferred over to Authority. 	<p>§9.01</p> <p>§9.02</p>
City of Sparks	<ul style="list-style-type: none"> • Sparks to convey property needed for flood project. • TRAction and other contracts Sparks has with County relating to the Truckee River Flood Management Project transferred over to Authority. 	<p>§10.01</p> <p>§10.02</p>
GENERAL TERMS		
Term and Termination of Agreement	<ul style="list-style-type: none"> • Agreement Commences when executed by all parties (Authority executes when it has been duly organized) and approved by Attorney General, and is perpetual until terminated. • Agreement may be partially or completely terminated by agreement of the parties. Authority must be dissolved on complete termination of Agreement. 	<p>§11.01</p> <p>§11.02</p>
Other Terms and Provisions	Provisions regarding default and remedies [§11.03], waivers [§11.04], representations and warranties of the parties [§11.05], general covenants of the parties [§11.06], assignment and delegation [§11.07], binding effect, no third party beneficiaries [§11.08], standards for approval [§11.09], notices [§11.10], further acts and assurances [§11.11], attorneys fees and costs [§11.12], timing provisions [§11.13], applicable law [§11.14], non-liability of officers and employees of parties [§11.15], severability of invalid provisions [§11.16], construction of Agreement [§11.17], modifications and amendments [§11.18], authority to execute [§11.19] and entire agreement with counterpart signatures [§11.20]	