# UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION Lahontan Basin Area Office

### $\frac{\text{CONTRACT FOR STORAGE OF NON-PROJECT WATER}}{\text{AMONG THE UNITED STATES}}$

#### **AND**

### WASHOE COUNTY WATER CONSERVATION DISTRICT, THE CITY OF RENO, THE CITY OF SPARKS, AND THE COUNTY OF WASHOE

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1 2 3 4	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION Lahontan Basin Area Office	
5 6 7 8 9	CONTRACT FOR STORAGE OF NON-PROJECT WATER  AMONG THE UNITED STATES  AND  WASHOE COUNTY WATER CONSERVATION DISTRICT, THE CITY OF RENO,  THE CITY OF SPARKS, AND THE COUNTY OF WASHOE	
10	THIS CONTRACT, made this day of, 201,	
11	pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory or	
12	supplementary thereto, and the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of	
13	1990 (Public Law 101-618; Act of November 16, 1990; 104 Stat. 3307) (hereinafter referred to	
14	as the Settlement Act), among the UNITED STATES OF AMERICA, hereinafter referred to as	
15	the United States; Washoe County Water Conservation District, hereinafter referred to as	
16	Conservation District; the CITY OF RENO, hereinafter referred to as Reno; the CITY OF	
17	SPARKS, hereinafter referred to as Sparks; and, the COUNTY OF WASHOE, hereinafter	
18	referred to as Washoe County; Reno, Sparks, and Washoe County are sometimes hereinafter	
19	collectively referred to as the Contractors;	
20	WITNESSETH, That:	
21	EXPLANATORY RECITALS	
22	WHEREAS, the United States and the Contractors are Signatory Parties to the	
23	operating agreement, authorized and negotiated pursuant to Section 205(a) of the Settlement Act,	
24	entitled "Truckee River Operating Agreement," dated September 6, 2008, hereinafter referred to	
25	as TROA; and	
26	WHEREAS, the United States is the owner of the Truckee River Reservoirs: and	

27	WHEREAS, this Contract is intended to satisfy the provisions of Section 7.A.2(b),
28	7.E.3, and 7.E.4 of TROA;
29	NOW, THEREFORE, in consideration of the covenants herein contained, the
30	parties agree as follows:
31	<u>DEFINITIONS</u>
32	1. For purposes of this Contract, words which appear in bold face and with the first
33	letter capitalized have the same definition as used in the TROA. Terms used in this Contract
34	which are not defined in TROA or in this Contract shall have their ordinary meaning.
35	(a) "Contracting Officer" means the Secretary's duly authorized
36	representative acting pursuant to this Contract or applicable Federal Reclamation law or
37	regulation; and
38	(b) "Year" shall mean the period January 1 through December 31.
39	TERM OF CONTRACT
40	2. (a) This Contract shall become effective when TROA first enters into effect
41	and shall remain in effect for 40 years thereafter, which term shall include any period of time
<b>1</b> 2	TROA goes out of effect. This Contract shall be renewable for additional 40-year periods, as
13	further provided in Article 2(b), as long as TROA is in effect.
<b>1</b> 4	(b) The renewal of this Contract shall be under terms and conditions
15	consistent with Federal and state law; Provided, That the storage charge provided in Article 6 of
16	this Contract shall be renegotiated as required by Section 7.A.2(b)(2)(ii) of TROA; Provided
17	further, That if TROA or the Water Quality Settlement Agreement dated October 10, 1996, is
18	revised to provide for a storage charge this Contract shall be renegotiated.
19	(c) Except as provided in Article 2(b) of this Contract, this Contract shall
50	automatically terminate if TROA is no longer in effect, except that any payment obligation of the

51 Contractors that is outstanding at the time of termination shall survive such termination, and any 52 water of the Contractors in storage shall be treated in accordance with Section 12.B of TROA. 53 PROVISIONS OF TRUCKEE RIVER OPERATING AGREEMENT CONTROLLING 54 3. This Contract is intended to be consistent with TROA, and shall be construed 55 accordingly. In the event of a conflict between the provisions of this Contract and the provisions 56 of TROA, the provisions of TROA shall control and, if necessary, this Contract shall be amended 57 accordingly. 58 STORAGE OF WATER OUALITY CREDIT WATER 59 4. (a) The Contractors may store Water Quality Credit Water in the Truckee 60 River Reservoirs in accordance with TROA and Section 5(e) of the Water Quality Settlement 61 Agreement. Pursuant to Article 5(e) of the Water Quality Settlement Agreement, storage of 62 Water Quality Credit Water may occur to the extent that the United States determines that 63 space is available for that purpose in the **Truckee River Reservoirs**. 64 (b) The parties agree that storage of Water Quality Credit Water in the 65 Truckee River Reservoirs pursuant to Section 7(d) of the Water Quality Settlement Agreement 66 is not included in this Contract. It is acknowledged by all parties, should the Contractors desire 67 to store Water Quality Credit Water pursuant to Section 7(d) of the Water Quality Settlement Agreement, an additional storage contract shall be negotiated for that purpose. 68 69 **SCHEDULES** 70 5. Within ten business days after this Contract first enters into effect, and at least 71 30 days prior to each Year for the term of this Contract, the Contractors shall submit an initial

and this Contract, to be stored in the **Truckee River Reservoirs** during the upcoming Year. Any

schedule to the Contracting Officer showing the annual quantities of Water Quality Credit

Water, which is identified under the Truckee River Water Quality Settlement Agreement

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75 revision(s) of the initial schedule shall be submitted by the Contractors to the Contracting Officer 76 as soon as practicable. The initial schedule, and any revision(s) thereof, shall be in a form 77 acceptable to the Contracting Officer. 78 PAYMENT FOR STORAGE 79 6. Consistent with TROA and the Water Quality Settlement Agreement, payment by 80 the Contractors for the storage of Water Quality Credit Water in the Truckee River 81 **Reservoirs** under this Contract shall be at the rate of \$0.00 per acre-foot per Year. All storage of 82 Water Quality Credit Water is at no cost; *Provided*, should TROA or the Water Quality 83 Settlement Agreement be amended to provide for payment, this Contract shall be amended. 84 COMPENSATION TO THE CONSERVATION DISTRICT 7. 85 Compensation to the Conservation District for operation and maintenance of Boca 86 Dam and Reservoir with respect to this Contract, shall be calculated and paid as an expense of 87 administration of TROA in accordance with the provisions of Section 7.A.2(b)(3) of TROA and 88 not under this Contract. Nothing in this Contract is intended to change any obligations of any 89 **Person**, including Reno, Sparks or Washoe County, with respect to payments to the 90 Conservation District in connection with assessments or fees levied under authority other than 91 TROA. 92 **CONTRACT ADMINISTRATION COSTS** 93 8. (a) The Contractors shall advance sufficient funds annually to the 94 United States, and shall advance sufficient funds at such other times as may be determined by the 95 Contracting Officer to be needed to maintain sufficient funds, to cover all reimbursable costs 96 associated with the United States administration of this Contract, including appropriate share of

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indirect costs.

(b) Reimbursable costs will include, but are not necessarily limited to:

(1) United States costs incurred during the performance reviews and audits for the Contract renewal; (2) development and review of Reno's, Sparks', or the Washoe County's conservation plan; (3) resolution of disputes under this Contract; (4) attendance at meetings regarding this Contract; (5) general Contract administration; (6) National Environmental Policy Act and other environmental compliance costs or an applicable portion thereof; (7) those costs incurred in response to a specific request from Reno, Sparks or Washoe County; and (8) other costs directly related to the administration of this Contract.

- (c) Within ten business days after the day that TROA enters into effect, and 30 days prior to the first day of each subsequent Year for the term of this Contract, the Contracting Officer shall provide the Contractors with a budget showing the reimbursable costs anticipated to be incurred by the United States for the upcoming Year. The Contractors shall pay the anticipated reimbursable costs to the United States within said 30 days.
- (d) The Contracting Officer shall notify the Contractors any time during the year when it becomes apparent that the United States' anticipated reimbursable costs will exceed the anticipated budgeted amount. The Contractors shall pay the additional anticipated reimbursable costs to the United States within 30 days of receipt of the notice. If the additional monies are disputed, the dispute resolution procedure shall apply; *Provided*, That the Contractors still be required to pay the anticipated reimbursable costs to the United States within said 30 days subject to adjustment based on the outcome of the dispute resolution; *Provided further*, That if the Contractors' funding ability to satisfy any costs required by this Contract is withdrawn, limited, or impaired by an action outside the control of the Contractors, such costs will be suspended until such time as the funding is restored.

(e) Payments received by the United States during a previous Year, and which are determined by the Contracting Office to be in excess of the amount applicable under Article 8 of this Contract, shall first be applied to any current liabilities of the Contractors arising out of Article 8 of the Contract then due and payable. After that, any amount of such overpayment shall be credited against amounts to become due to the United States by the Contractors under Article 8 of this Contract. With respect to overpayment, such crediting shall constitute the sole remedy of the Contractors or anyone having or claiming to have a right under this Contract.

(f) Nothing in Article 8 of this Contract is intended to require, and Article 8 of this Contract shall not be construed as requiring the Contractors to reimburse the United States for any cost or expense the United States is obligated to pay under the provisions of TROA.

#### WATER CONSERVATION

9. Contractors shall comply with the provisions of that certain Agreement, dated July 18, 1996, by and among the Pyramid Tribe, Sierra Pacific Power Company, the Cities of Reno and Sparks, and Washoe County, and any amendments thereto in satisfaction of the water conservation contingency section 29(e) of the Preliminary Settlement Agreement as Modified by the Ratification Agreement (Exhibit 1 of the Settlement Act). The United States shall review that Agreement from time to time.

#### UNITED STATES NOT LIABLE

10. There may occur at times during any year a shortage in available storage space, depending on hydrology, demand, and Reno, Sparks, or Washoe County's water management decisions. If there is a shortage of storage space because of errors in physical operations of the facility, other physical causes beyond the reasonable control of the Contracting Officer, or actions taken by the Contracting Officer to meet current and future legal obligations, then no

liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect arising therefrom.

#### RESOLUTION OF DISPUTES

- 11. (a) Should any dispute arise concerning any of the provisions of this Contract, or the parties' rights and obligations thereunder, other than disputes regarding the storage of water as provided in TROA, the parties to this Contract shall meet and confer within 30 days of providing written notice of the dispute to the other party. If the parties have not resolved the dispute within 90 days after such notice, or such other period as mutually agreed to, the Contractors may commence any legal action, and the Contracting Officer may refer any matter to the Department of Justice; *Provided*, That the party shall provide to the other party 30 days' written notice of the intent to take such action; *Provided*, *further*, That such notice and meet and confer process shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit.
- (b) Should any dispute arise concerning the storage of Water Quality Credit Water under TROA, the dispute shall be referred to the TROA dispute resolution process, in accordance with Section 2.B. of TROA. If the dispute involves a shortage of space in the United States' Truckee River Reservoirs resulting from causes or actions referred to in Article 10 of this Contract, the liability of the United States shall be limited as provided in that Article 10.

#### CHARGES FOR DELINQUENT PAYMENTS

12. (a) The Contractors shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractors shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractors shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractors shall pay, in addition to the interest and administrative charges, a penalty charge for each day the

payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractors shall also pay any fees incurred for debt collection services associated with a delinquent payment.

- (b) The interest rate charged shall be the greater of either the rate prescribed quarterly in the <u>Federal Register</u> by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.
- (c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

#### **CONFIRMATION OF CONTRACT**

13. Promptly after the execution of this contract, Reno, Sparks, and Washoe County shall provide evidence to the Contracting Officer that, pursuant to the laws of the State of Nevada, Reno, Sparks, and Washoe County are legally constituted entity(ies) and the Contract is lawful, valid, and binding on Reno, Sparks, and Washoe County. This Contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction.

#### NOTICES

14. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractors, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825; and on behalf of the United States, when mailed, postage prepaid, or delivered to: the City of Reno, John Flansberg, Director of Public Works, 1 East First Street, Reno, Nevada 89501; the City of Sparks, John A. Martini, Community Services Director, 431 Prater Way, Sparks Nevada 89431, and the County of Washoe, Dave Solaro, 1001 East Ninth Street, Reno, Nevada 89519. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

#### **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

15. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractors from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

#### 205 OFFICIALS NOT TO BENEFIT 206 No Member of or Delegate to the Congress, Resident Commissioner, or official of 16. 207 the Contractors shall benefit from this Contract other than as a water user or landowner in the 208 same manner as other water users or landowners. 209 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED 210 17. The provisions of this Contract shall apply to and bind the successors and assigns 211 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein 212 by either party shall be valid until approved in writing by the other party. 213 BOOKS, RECORDS, AND REPORTS 214 18. The Contractors shall establish and maintain accounts and other books and 215 records pertaining to administration of the terms and conditions of this Contract, including the 216 Contractors' financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop 217 218 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting 219 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on 220 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine 221 222 and make copies of the other party's books and records relating to matters covered by this 223 Contract. 224 EQUAL EMPLOYMENT OPPORTUNITY 225 19. During the performance of this Contract, the Contractors agree as follows: 226 The Contractors will not discriminate against any employee or applicant 227 for employment because of race, color, religion, sex, disability, or national origin. The 228 Contractors will take affirmative action to ensure that applicants are employed, and that 229 employees are treated during employment, without regard to their race, color, religion, sex. 230 disability, or national origin. Such action shall include, but not be limited to the following: 231 employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including 232 apprenticeship. The Contractors agree to post in conspicuous places, available to employees and 233 234 applicants for employment, notices to be provided by the Contracting Officer setting forth the 235 provisions of this nondiscrimination clause. 236 (2) The Contractors will, in all solicitations or advertisements for employees placed by or on behalf of the Contractors, state that all qualified applicants will receive 237 consideration for employment without regard to race, color, religion, sex, disability, or national 238 239 origin. 240 (3) The Contractors will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, 241 to be provided by the Contracting Officer, advising the labor union or workers' representative of 242

- the Contractors' commitments under section 202 of Executive Order 11246 of September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 246 (4) The Contractors will comply with all provisions of EO 11246, and of the 247 rules, regulations, and relevant orders of the Secretary of Labor.

- (5) The Contractors will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractors' noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractors may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractors will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The Contractors will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractors become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractors may request that the United States enter into such litigation to protect the interests of the United States.

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

- 20. (a) The Contractors shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),] and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
- (b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the Contractors agree to immediately take any measures necessary to implement this

obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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- (c) The Contractors make this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractors by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractors recognize and agree that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.
- (d) Complaints of discrimination against the Contractors shall be investigated by the Contracting Officer's Office of Civil Rights.

#### **CERTIFICATION OF NONSEGREGATED FACILITIES**

21. The Contractors hereby certify that they do not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractors agree that a breach of this certification is a violation of the Equal Employment Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom. disability, or otherwise. The Contractors further agree that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that they will retain such certifications in its files; and that they will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

## NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period

322 323	(i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.
324	MEDIUM FOR TRANSMITTING PAYMENTS
325 326 327 328	22. (a) All payments from the Contractors to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.
329 330 331 332	(b) Upon execution of the contract, the Contractors shall furnish the Contracting Officer with the Contractors' taxpayer's identification numbers (TIN). The purpose for requiring the Contractors' TIN is for collecting and reporting any delinquent amounts arising out of the Contractors' relationship with the United States.
333	CONTRACT DRAFTING CONSIDERATIONS
334	23. All double spaced articles of this Contract have been drafted, negotiated, and
335	reviewed by the parties hereto, each of whom is sophisticated in the matters to which this
336	Contract pertains, and no one party shall be considered to have drafted the stated articles.
337	IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
338	the day and year first above written.
339	UNITED STATES OF AMERICA
340 341	By:
342	Bureau of Reclamation

Contract No. 16-WC-20-4923

343 344			WASHOE COUNTY WATER CONSERVATION DISTRICT
345 346 347		By:	Don Casazza President, Board of Directors
348	Attest:		
349 350	By:		

351		CITY OF RENO
352 353 354		By: Hillary L. Schieve Mayor
355	Attest:	Approved as to Form:
356 357	By:Ashley D. Turney, City Clerk	By: Susan Ball Rothe, Deputy City Attorney

358		CITY OF SPARKS
359 360 361		By: Geno Martini Mayor
362	Attest:	Approved as to Form:
363 364	By:	By:Chet Adams, City Attorney

365		COUNTY OF WASHOE
366 367 368		By:  Kitty K. Jung Chair, Board of County Commissioners
369	Attest:	Approved as to Form:
370 371 372	By: Nancy Parent, County Clerk	By: Paul Lipparelli, Chief Deputy District Attorney