

RETURN FLOW MANAGEMENT AGREEMENT

BETWEEN

**TRUCKEE MEADOWS WATER AUTHORITY,
a joint powers authority and political subdivision of the State of Nevada**

AND

**CITY OF RENO, a municipal corporation
CITY OF SPARKS, a municipal corporation, and
TRI GENERAL IMPROVEMENT DISTRICT,
a political subdivision of the State of Nevada**

RETURN FLOW MANAGEMENT AGREEMENT

THIS RETURN FLOW MANAGEMENT AGREEMENT (“Agreement”) is made and entered into as of the Effective Date by and between the Truckee Meadows Water Authority, a joint powers authority and political subdivision of the State of Nevada created pursuant to NRS Chapter 277 (“TMWA”), the City of Reno, a municipal corporation (“Reno”), City of Sparks, a municipal corporation (“Sparks”), and TRI General Improvement District, a political subdivision of the State of Nevada (“TRIGID”).

RECITALS

WHEREAS, Reno and Sparks own and operate a wastewater treatment plant facility in Washoe County known as the Truckee Meadows Water Reclamation Facility (“TMWRF”), which provides Reclaimed Water service to customers from effluent produced by the facility.

WHEREAS, TRIGID is a general improvement district created by Storey County pursuant to NRS Chapter 318 and 308 and provides community water and sewer service to customers within the Tahoe Reno Industrial Center (“TRI Center”) in Storey County.

WHEREAS, TMWA is a municipal water purveyor which manages various groundwater and surface water resources in connection with its operations, and subject to the provisions of the Truckee River Operating Agreement (“TROA”) and the Orr Ditch Decree has exclusive authority over the execution and implementation of its obligations thereunder, including management of TMWA water resources recognized therein.

WHEREAS, Reno, Sparks and TRIGID have entered or will enter into that certain Agreement for Treated Effluent dated September 13, 2017 (“TRIGID Agreement”) attached hereto as Exhibit “A”, pursuant to which, *inter alia*, Reno and Sparks have agreed to reserve and deliver through the Pipeline Project up to 4,000 acre-feet annually of Reclaimed Water to the TRIGID for resale as Process Water to TRIGID Customers in the TRI Center, and TRIGID has agreed to design, construct and operate the Pipeline Project on the terms and conditions set forth in the TRIGID Agreement. Except as otherwise defined in this Agreement, capitalized terms shall have the meaning ascribed to them in the TRIGID Agreement.

WHEREAS, Reno and Sparks hold Permit No. 29973, a primary effluent reuse permit issued by the State of Nevada Division of Water Resources pursuant to NRS 533.440 which authorizes the appropriation of the groundwater and surface water components of approximately 20,170 acre-feet of effluent from TMWRF for beneficial use as Reclaimed Water pursuant to terms of existing or additional secondary permits issued by the Division of Water Resources.

WHEREAS, in some circumstances, where effluent generated at TMWRF is put to use as Reclaimed Water and is not returned to the Truckee River, secondary permits require that the return flow component to the Truckee River must be made up from other water sources, typically approved for in-stream flow purposes, under applicable regulatory provisions. The groundwater component of effluent appropriated for Reclaimed Water is not subject to a Return Flow Requirement, and Reno and Sparks have other water resources which can satisfy a Return Flow Requirement where applicable.

WHEREAS, Reno and Sparks desire to allocate a portion of the groundwater component of TMWRF effluent to satisfy a portion of TRIGID Reclaimed Water Supply return flow requirements; however, additional water resources are required to satisfy potential return flow requirements associated with the full TRIGID Reclaimed Water Supply.

WHEREAS, the State of Nevada Department of Transportation (“State”) owns Truckee River water rights in the Truckee Meadows, estimated to be between 1,500 and 2,200 acre-feet, that will be dedicated to in-stream flow in the Truckee River, which can also be used by TMWA for satisfaction of the Return Flow Requirement.

WHEREAS, TRIGID also owns Truckee River water rights that can be made available for in-stream flows and TRIGID will provide 1,500 acre-feet of its Truckee River or tributary water resources, in addition to causing the State Return Flow Resources to be properly titled such that TMWA may use the State Return Flow Resources in connection with the Return Flow Requirement; however, these water resources may not be sufficient at certain times to fully satisfy potential return flow requirements associated with the full TRIGID Reclaimed Water Supply.

WHEREAS, TMWA, as allowed by TROA, holds certain water resources which can support Reclaimed Water service and which are either not subject to the Return Flow Requirement or which otherwise can satisfy the Return Flow Requirement to the Truckee River. Reno, Sparks, and TRIGID desire TMWA to control and utilize the Managed Resources to make water resources available for Return Flow Purposes in connection with and to facilitate implementation of the TRIGID Agreement, the implementation of which may provide indirect benefits to TMWA by reducing the demand to convert for use in TRI Center Truckee River water resources otherwise available for TMWA municipal supply.

WHEREAS, to meet National Pollutant Discharge Elimination System standards, TMWRF must achieve a complex balance between treatment plant processes, effluent reuse, water rights requirements, Truckee River water quality standards, and numerous other interrelated, regional water management objectives. These objectives are complicated by the fact that the Truckee River water system is governed by a unique combination of state and federal law, federal decree, and by TROA, and operation and management of effluent and return flow resources at TMWRF can be impacted by these laws and regulations as well as TMWA operations of its potable water system. Reno, Sparks, and TRIGID further recognize that water resource operational efficiencies may

result from TMWA managing the utilization and scheduling of water resources used to meet return flow obligations associated with TMWRF reclaimed water deliveries and the TRIGID Agreement, the management of which resources may provide additional indirect benefits to TMWA by enhancing the efficient use of Truckee River resources and facilitating regional water management objectives.

WHEREAS, Reno, Sparks, and TRIGID desire TMWA to, and TMWA is agreeable to, make certain water resources available for return flow purposes to facilitate the TRIGID Agreement and provide certain scheduling and management of water resources in connection with return flow obligations associated with TMWRF reclaimed water supply, all on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

Terms not defined elsewhere in this Agreement shall have the meanings stated below in this Article I:

a. “Available Groundwater Component” means the amount of the Groundwater Component which exceeds the total combined demands of Reno and Sparks for Reclaimed Water supply from TMWRF (excluding the TRIGID Reclaimed Water Supply), and which is available from time to time to support the TRIGID Reclaimed Water Supply. For purposes of this Agreement, the Available Groundwater Component shall be determined by TMWA on at least a weekly basis and in no event shall exceed the amount authorized under Division of Water Resources Permit No. 29973.

b. “Effective Date” means the date that the last Party executes this Agreement.

c. “Effluent” shall have the same meaning ascribed to “treated effluent” under NAC 445A.2748.”

d. “Groundwater Component” means the quantity of Effluent discharged from TMWRF which results from groundwater delivered to TMWRF for treatment as appropriated for Reclaimed Water purposes under Division of Water Resources Permit No. 29973. For purposes of this Agreement, the amount of the Groundwater Component shall be determined by TMWA on at least a weekly basis by multiplying the TMWRF Effluent Production by a percentage, calculated from the ratio of TMWA’s municipal groundwater

production (which sewers into TMWRF) to TMWA's total municipal production (which sewers into TMWRF).

e. "Groundwater Component Limit" means a portion of the Groundwater Component up to, but not to exceed, 4,500 acre-feet annually, which shall be available in the aggregate for Reclaimed Water commitments to customers (other than TRIGID) by Reno and Sparks.

f. "Managed Resources" means the Groundwater Component (including the Available Groundwater Component), TRIGID Replacement Water, TMWA Return Flow Resources and Other Return Flow Resources managed by TMWA for Return Flow Purposes under this Agreement.

g. "Other Return Flow Resources" means Truckee River surface water rights or other water rights held by Reno or Sparks during the term of this Agreement and which are made available to TMWA for management for Return Flow Purposes to support TMWRF Reclaimed Water supply.

h. "Potential Community Resource Obligation" means any potential shortfall, from time to time, between the amount of water resources needed for Return Flow Purposes to satisfy Return Flow Requirements for the TRIGID Reclaimed Water Supply and the combined amount of the TRIGID Replacement Water and Available Groundwater Component. The amount of the Potential Community Resource Obligation shall be determined by TMWA on at least a weekly basis but shall not exceed the amounts set forth in Section 4.4.

i. "Reclaimed Water" means Effluent delivered from TMWRF to customers for reclaimed water use.

j. "Reservoir" means a water storage facility to be constructed, owned and operated by TRIGID located on USA Parkway in TRI Center, which will function as a storage reservoir for sources of Process Water (as defined in TRIGID Agreement"), including TRIGID Reclaimed Water Supply, with a storage capacity of at least 1,500 acre-feet.

k. "Resource Management Services" shall have the meaning ascribed to it in Article IV of this Agreement.

l. "Return Flow Purposes" means the use of water resources to satisfy the Return Flow Requirement arising from the use of Reclaimed Water which is not returned to

the Truckee River according to applicable permits, including without limitation water resources which may legally be used for in-stream flow or water resources which legally are not subject to a Return Flow Requirement.

m. “Return Flow Requirement” means that quantity of water necessary to ensure that return flow to the Truckee River is no less than would have been required by the State Engineer had Reclaimed Water been discharged as treated effluent to the Truckee River at TMWRF, and to ensure that the timing of such return flow is not changed.

n. “State Return Flow Resources” means 1,500 to 2,200 acre-feet annually of Truckee River water rights held by the State, the title to which will be proved by TRIGID under this Agreement so that such proved-up water rights may managed by TMWA for Return Flow Purposes under the terms of a water rights management agreement between TMWA and State in order to satisfy return flow obligations in connection with the TRIGID Reclaimed Water Supply.

o. “TMWA Return Flow Resources” means those water resources made available, in TMWA’s sole and absolute discretion, to satisfy any Potential Community Resource Obligation in the amounts set forth in Section 4.4.

p. “TMWRF” means the Truckee Meadows Water Reclamation Facility in Washoe County, Nevada.

q. “TMWRF Effluent Production” means the total amount of Effluent produced by TMWRF from time to time, including Effluent discharged to the Truckee River, Reclaimed Water and TRIGID Reclaimed Water Supply. TMWRF Effluent Production shall be calculated on a daily or such other basis as requested by TMWA from time to time.

r. “TRIGID Reclaimed Water Supply” means the Reclaimed Water provided to TRIGID by TMWRF through the Pipeline Project pursuant to the TRIGID Agreement. The term “TRIGID Reclaimed Water Supply” as used in this Agreement is also referred to as “TMWRF Supply” in the TRIGID Agreement.

s. “TRIGID Agreement” means the Agreement for Treated Effluent between Reno, Sparks, and TRIGID specifying the rights, obligations, terms and conditions by which Reno and Sparks will provide the TRIGID Reclaimed Water Supply to TRIGID.

t. “TRIGID Replacement Water” shall mean that portion of the TRIGID Return Flow Resources and State Return Flow Resources permitted by the Nevada Division of

Water Resources to be used for Return Flow Purposes under this Agreement, and for which TMWA has managerial control.

u. “TRIGID Return Flow Resources” means 1,500 acre-feet annually of Truckee River water rights held by TRIGID to be provided under this Agreement for Return Flow Purposes and management by TMWA to satisfy return flow obligations in connection with the TRIGID Reclaimed Water Supply.

v. “TROA” means the Truckee River Operating Agreement.

w. “TROA Administrator” means the person appointed as Administrator under the Truckee River Operating Agreement.

ARTICLE II AUTHORITY

2.1 Authority. Chapter 277 of the Nevada Revised Statutes provide general and specific authority for the actions contemplated herein and NRS 277.170 provides that a public agency may support an agreement made pursuant to NRS 277.080-170 by selling, leasing, giving, or otherwise supplying property. NRS 277.180 provides generally for interlocal agreements.

ARTICLE III CONDITIONS NECESSARY FOR IMPLEMENTATION

3.1 Necessary Conditions. The obligations of TMWA to provide the Resource Management Services and TMWA Return Flow Resources shall be conditional upon and subject to the satisfaction of the following conditions precedent (“Necessary Conditions”) on or prior to the commencement of TRIGID Reclaimed Water Supply delivery, except, to the extent permitted that such conditions may be waived or extended in writing by TMWA. The Necessary Conditions consist of the following:

a. TMWA Board Approval. This Agreement shall be subject to review and approval by the TMWA Board of Directors.

b. TMWRF Rates. Reno and Sparks have adopted such ordinances necessary to implement any rates to be charged TRIGID by Reno and/or Sparks for the TRIGID Reclaimed Water Supply.

c. Agreement with State. TMWA has entered into an agreement with State, pursuant to which, *inter alia*, State will authorize TMWA to manage State Return

Flow Resources for purposes of the Return Flow Requirement and require that TRIGID prove title to any State Return Flow Resources to the satisfaction of the Nevada Division of Water Resources, all at no cost to TMWA or State.

ARTICLE IV TMWA RESOURCE MANAGEMENT SERVICES

4.1 TMWA Resource Management Services. TMWA shall provide the following services for the Parties during the term of this Agreement (collectively, the “Resource Management Services”):

(a) Manage, direct, and schedule the allocation and use of the Managed Resources to support delivery of Reclaimed Water supply, and to facilitate compliance with the Return Flow Requirement, including developing and submitting to Reno, Sparks and TRIGID operation schedules and scheduling procedures for managing and operating the Managed Resources.

(b) Monitor return flow obligations of TMWRF and provide direction on return flow issues to enable Reno and Sparks to provide the Reclaimed Water in compliance with the Return Flow Requirement while seeking to achieve water quality benefits and efficient regional use of water resources.

(c) Coordinate operational activities of Reno and Sparks with respect to TMWRF Effluent Production and Reclaimed Water supply and TRIGID with respect to storage and use of TRIGID Reclaimed Water Supply, including timing and scheduling of deliveries, facility capacity, and demands.

(d) Collect, review, analyze and develop information necessary to prepare a water accounting and to schedule the operations of the Managed Resources used for Return Flow Purposes under this Agreement.

(e) Collect, verify, organize and analyze data determined necessary by TMWA for management of the Managed Resources for Return Flow Purposes, including, but not limited to, climatologic data, hydrologic data, Truckee River operating data, operational status of facilities, and data associated with unscheduled events that may require changes to the operation of, or desirability of operating, the Managed Resources as scheduled.

(f) Prepare reports on at least a weekly basis documenting the scheduling, accounting and operation of the Managed Resources and administer, oversee and coordinate the implementation of such operational schedules.

(g) Communicate with the Nevada Division of Water Resources and TROA Administrator regarding the scheduling and operations of Managed Resources for Return

Flow Purposes, including administering and coordinating any submittals required to maintain the Managed Resources in good standing with the Nevada Division of Water Resources.

(h) Establish and implement priorities between Managed Resources and the scheduling of Managed Resources used to support TMWRF Effluent Production and Reclaimed Water supply and satisfy the Return Flow Requirement for Reclaimed Water and TRIGID Reclaimed Water Supply.

(i) To the extent practicable and consistent with exercise of water rights, assurance of water supplies, and operational considerations, recommend and encourage changes to operations to reduce or avoid conflicts in schedules and improve efficiency of use of Managed Resources.

In providing the Resource Management Services, TMWA shall seek to promote the efficient use of resources in compliance with the operational requirements of TROA and the Federal Water Master/TROA Administrator and in a manner which minimizes the use of TMWA Return Flow Resources, where feasible. TMWA shall have the right, where such does not diminish the quality, quantity or availability of resources and will enhance efficient use of Truckee River resources, to exchange all or any portion of the TRIGID Replacement Water with other TMWA water resources.

4.2 Priority of Rights. TRIGID, Reno, Sparks and TMWA shall develop and agree upon a schedule for prioritizing the use of Other Return Flow Resources, the Groundwater Component, TRIGID Replacement Water, Available Groundwater Component, and TMWA Return Flow Water for purposes of satisfying the Return Flow Requirement and Reclaimed Water demands from TMWRF for the TRIGID Reclaimed Water Supply and for Reno and Sparks existing and future Reclaimed Water customers, consistent with the provisions of Section 4.5 of this Agreement. So long as the ability to satisfy Return Flow Requirements is not impaired, TMWA may in its discretion pool and collectively manage and utilize the Managed Resources in order to facilitate the efficient use of such resources to satisfy Return Flow Requirement of any Reclaimed Water demands from TMWRF. TMWA shall obtain input on the schedule from the State Engineer and TROA Administrator, and if required their consent thereto.

4.3 Model Data. TRIGID, Reno, and Sparks shall obtain and provide to TMWA model scenario data as necessary for TMWA to identify operating constraints of TMWRF Effluent Production, Reclaimed Water, TRIGID Reclaimed Water Supply, TMWRF delivery systems including pump station capacity, TMWRF pipeline capacity, Pipeline Project capacity, Reservoir capacity and operations (including carry over of water from prior years operations), existing and anticipated future demand schedules of TRIGID, Reno, and

Sparks customers, and such other items to enable TMWA to identify and quantify schedules to maximize utilization of the Available Groundwater Component. TRIGID, Reno and Sparks shall obtain and provide to TMWA sufficient data and model scenario data as necessary for TMWA to identify and quantify schedules and/or methods for satisfying TRIGID Reclaimed Water Supply requirements under various operating and hydrological scenarios. TMWA shall obtain input and consent from the TROA Administrator and State Engineer, if any are required, on TMWA proposals for managing and operating TRIGID Replacement Water, the Groundwater Component, Available Groundwater Component, Other Return Flow Resources, and TMWA Return Flow Resources, including proposals for satisfying the Return Flow Requirement for all TRIGID Reclaimed Water Supply based on water model (including Riverware) output.

4.4 Identification and Amount of TMWA Return Flow Resources. TMWA will identify, in TMWA’s sole discretion, one or more of TMWA’s water resource supplies that TMWA may make available as TMWA Return Flow Resources. The amount of TMWA Return Flow Resources shall equal 2 acre-feet for every 3 acre-feet of TRIGID Replacement Water provided in excess of 1,500 acre-feet annually and less than 3,001 acre-feet annually. The amount of TMWA Return Flow Resources shall be reduced on a one for one basis for every acre-foot of TRIGID Replacement Water provided in excess of 3,000 acre-feet annually. Notwithstanding anything to the contrary herein, TMWA shall have no obligation: i) to make the TMWA Return Flow Resources available for use hereunder unless and until TRIGID provides at least 1,500 acre-feet of TRIGID Replacement Water and ii) to make available more than 1,000 acre-feet annually of TMWA Return Flow Resources in any event. The following table illustrates potential calculations of the amount of TMWA Return Flow Resources:

<u>TRIGID Replacement Water</u>	<u>TMWA Return Flow Resources</u>
1,500 AFA or less	0 AFA
1,800 AFA	200 AFA
2,400 AFA	600 AFA
3,000 AFA	1,000 AFA
3,500 AFA	500 AFA
3,700 AFA	300 AFA

4.5 Availability and Use of TMWA Return Flow Resources. Conditional on TRIGID, Reno and Sparks performance of their respective obligations under Sections 4.2, 4.3, 5.2, 5.3, 5.4 and 6.2, TMWA shall make available the TMWA Return Flow Resources

in the amounts set forth in Section 4.4 to satisfy the Return Flow Requirement for the TRIGID Reclaimed Water Supply, it being the express intention that, unless otherwise determined in TMWA's discretion: i) the Available Groundwater Component be used first to satisfy TRIGID Reclaimed Water Supply whenever possible, and ii) that when the Available Groundwater Component is not available TMWA Return Flow Resources be used, if at all, only after the TRIGID Replacement Water has been exhausted. Nothing in this Agreement is intended or shall be construed as a sale, lease or any other type of transfer of the TMWA Return Flow Resources, or to diminish in any way or limit TMWA's control or use of its water resources. TMWA's obligation to make the TMWA Return Flow Resources available pursuant to this Section 4.5 shall be conditional on TMWA receiving the model data described in Section 4.3 and such assurances and/or approvals, if any are required, from the State Engineer and the TROA Administrator confirming the ability of TMWA to utilize water resources identified by TMWA as TMWA Return Flow Resources, on terms and conditions acceptable to TMWA, in its sole discretion. Reno and Sparks acknowledge and agree that TMWA owns all consumptive and non-consumptive components of TMWA's Privately Owned Stored Water and M&I Credit Water (as such terms are defined in TROA), including rights to Effluent generated therefrom. Reno and Sparks will cooperate with TMWA in good faith to secure primary permits on the quantity of Effluent from TMWRF which is determined by the State Engineer to result from the municipal use of TMWA's Privately Owned Stored Water and/ or TMWA's M&I Credit Water so that TMWA may be issued one or more secondary permits for the beneficial use of such Effluent (water) without any requirement for return flow to the Truckee River.

4.6 Payment to TMWA.

4.6.1 Cost Reimbursement. TRIGID shall reimburse TMWA for all costs incurred in connection with the performance of TMWA's obligations under this Agreement, including without limitation, internal and third party costs to perform the Resource Management Services, labor, administrative, overhead, legal and staffing costs, and permitting fees. Third party consultant costs must be pre-approved by TRIGID, provided such approval shall not be unreasonably withheld, denied, conditioned or delayed. TMWA shall invoice TRIGID for such costs on a monthly basis, and TRIGID shall pay such invoices within thirty (30) days of receipt. TMWA and TRIGID agree to work in good faith to resolve any disputes over reimbursement invoices and TMWA agrees to extend the period for payment for a reasonable time period if an extension is needed to accommodate the good faith resolution of any invoice disputes.

4.6.2 Resource Fee. In addition to the cost reimbursement set forth in Section 4.6.1, TRIGID shall pay TMWA a resource fee ("Resource Fee") for TMWA Return Flow Resources used to satisfy the Return Flow Requirement for the TRIGID Reclaimed Water Supply pursuant to this Agreement. The Resource Fee shall be based upon actual cost

of service and operating expenses incurred by TMWA to facilitate TRIGID Reclaimed Water Supply outside of normal potable water service operations in connection with this Agreement (e.g., costs associated with pumping additional groundwater to enhance the Available Groundwater Component, etc.). Unless otherwise adjusted pursuant to Section 4.6.3, the initial Resource Fee shall equal \$47/acre-foot for TMWA Return Flow Resources comprised of surface water sources of supply (e.g., Truckee River water resources, TMWA privately owned stored water, creek water resources) and \$29/acre-foot for TMWA Return Flow Resources comprised of groundwater sources of supply. TMWA shall invoice TRIGID for the Resource Fee on a monthly basis, and TRIGID shall pay such invoices within thirty (30) days of receipt. TMWA and TRIGID agree to work in good faith to resolve any disputes over Resource Fee invoices or any adjustments to the Resource Fee and TMWA agrees to extend the period for payment for a reasonable time period if an extension is needed to accommodate the good faith resolution of any invoice or adjustment disputes.

4.6.3 Resource Fee Adjustments. The Resource Fee shall increase annually by two percent (2%) commencing on July 1, 2022 and on the 1st day of July every year thereafter. The Resource Fee may also be adjusted by the TMWA Board of Directors pursuant to TMWA standard procedures for cost of service rate adjustments, if necessary, to more effectively capture TMWA actual costs to provide the TMWA Return Flow Resources, such adjustment to be made no more than: i) once prior to July 1, 2022; and ii) once every five years this Agreement is in effect.

4.7 Limitations on Liability. As a material inducement to TMWA to provide the Resource Management Services and for the Parties to obtain the benefits provided hereunder, the Parties agree TMWA shall not be responsible or liable in any manner for any claims arising from or related to i) the production, delivery, transmission or use of, or any disruption, restriction, curtailment or interruption in, TMWRF Effluent Production, Reclaimed Water supply or TRIGID Reclaimed Water Supply, ii) the operation or maintenance of any wastewater or Effluent systems or facilities. TMWA is hereby released from and disclaims liability for, and TRIGID, Reno and Sparks shall indemnify and hold TMWA harmless from, any losses, claims, causes of action, liability and expenses of whatever nature and howsoever arising in connection with or related to the performance of obligations under the TRIGID Agreement or arising from or related to TMWRF Effluent Production, Reclaimed Water or TRIGID Reclaimed Water Supply, including quality and quantity of Effluent or Reclaimed Water and any attorneys' fees and costs incurred in connection with third party claims, challenges, administrative proceedings or litigation to prosecute or defend permits for Reclaimed Water use or Return Flow Purposes contemplated by this Agreement. In no event shall TMWA be responsible to any Party for any punitive, consequential, loss of use, business interruption or special damages, whether foreseeable or not foreseeable and whether or not same were contemplated by a party as being potentially incurred by the other.

ARTICLE V TRIGID PROVISIONS

5.1. Satisfaction of Necessary Conditions. TRIGID shall take all actions reasonably necessary to satisfy the Necessary Conditions which require performance by TRIGID.

5.2 TRIGID Return Flow Resources. TRIGID shall, at no cost to TMWA: i) apply for and secure all necessary approvals and permits from the Nevada Division of Water Resources authorizing the use of as much of the TRIGID Return Flow Resources as possible for Return Flow Purposes in connection with the TRIGID Reclaimed Water Supply; and ii) enter into an appropriate conveyance or lease to TMWA, authorizing and facilitating the ability of TMWA to manage the TRIGID Return Flow Resources for Return Flow Purposes, all of which on terms and conditions reasonably acceptable to TMWA to enable management as intended in this Agreement. TRIGID shall confer and cooperate with TMWA in advance with respect to the terms and type of any application filed with the Nevada Division of Water Resources under this Section.

5.2.1 After Acquired Rights. Any water rights acquired after the Effective Date for use as TRIGID Return Flow Resources shall be deeded to TMWA for use by TMWA as TRIGID Return Flow Resources or, when not otherwise required for Return Flow Purposes, such other temporary purposes determined by TMWA from time to time. Upon termination of this Agreement, the after acquired rights referred to in this Section 5.2.1 shall be permitted for municipal use within TMWA's retail service area and banked by TMWA for the benefit of TRIC, TRIGID or their assignees as mutually agreed by TRIC and TRIGID.

5.3 State Return Flow Resources. TRIGID shall, at no cost to TMWA, apply for and secure all necessary approvals and permits from the Nevada Division of Water Resources authorizing the use of the State Return Flow Resources for Return Flow Purposes in connection with the TRIGID Reclaimed Water Supply. TRIGID shall confer and cooperate with TMWA in advance with respect to the terms and type of any application filed with the Nevada Division of Water Resources under this Section.

5.4 Discharge Permits and Effluent Management Plan Approvals. TRIGID shall file and secure all necessary approvals from the Nevada Division of Environmental Protection for the discharge and use of the TRIGID Reclaimed Water Supply to provide Process Water service to TRIGID Customers.

5.5 TRIGID Cooperation. TRIGID acknowledges and agrees that optimal management of the Managed Resources may require the daily amount of TRIGID Reclaimed Water Supply to fluctuate in accordance with the season, drought conditions, TRIGID

demands, and efficient use of Managed Resources, and in some circumstances may require TRIGID to accept delivery of TRIGID Reclaimed Water Supply in excess of daily demands for storage in the Reservoir for later use, or to accept deliveries below daily demands and supplement such deliveries with TRIGID Reclaimed Water Supply previously stored in the Reservoir. TRIGID shall cooperate with TMWA in good faith to facilitate implementation of the Resource Management Services, including coordinating the operations of TRIGID's facilities and deliveries of TRIGID Reclaimed Water Supply with TMWA and maximizing the use of the Available Groundwater Component when feasible. So long as this Agreement is in effect, TRIGID shall further cooperate in good faith with TMWA to minimize acquisitions of additional Truckee River water rights or competing with TMWA for the acquisition of Truckee River water rights, and where such does not diminish the quality, quantity or availability of resources will cooperate with TMWA to facilitate exchange or other transfers of TRIGID water rights, acquired now or in the future, with TMWA water resources.

5.6 Metering and Reporting. No less than annually, TRIGID shall provide TMWA with its projected TRIGID Reclaimed Water Supply demands for the ensuing year. No less than monthly, TRIGID shall provide TMWA, Reno and Sparks with TRIGID Reclaimed Water Supply meter read data, data on the amount of TRIGID Reclaimed Water Supply delivered to customers and stored in the Reservoir, available capacity in the Reservoir, and projected TRIGID Reclaimed Water Supply demands for the ensuing month.

5.7 Notification. TRIGID shall notify TMWA as soon as practicable if TRIGID becomes aware of any condition which affects TRIGID Reclaimed Water Supply or which will materially affect projected TRIGID Reclaimed Water Supply demands or Reservoir capacity.

5.8 Use. TRIGID Reclaimed Water Supply shall only be used for non-potable purposes, and shall not be used for indirect potable reuse unless mutually agreed by TMWA. TRIGID is responsible for using the TRIGID Reclaimed Water Supply in a lawful manner and shall not discharge any portion of the TRIGID Reclaimed Water Supply to the Truckee River.

5.9 Capacity Reservation Restriction. TRIGID acknowledges and agrees that in the event the combined amount of TRIGID Replacement Water and TMWA Return Flow Resources authorized for Return Flow Purposes is less than 4,000 acre-feet annually, Reno and Sparks may limit the amount of the Capacity Reservation and TRIGID Reclaimed Water Supply as set forth in the TRIGID Agreement.

5.10 Representations and Warranties. Except as provided in this Section 5.10, TRIGID represents and warrants to TMWA that TRIGID has not previously sold, encumbered, pledged, assigned, conveyed, transferred or allocated to a will serve

commitment any of the TRIGID Return Flow Resources, and that the TRIGID Return Flow Resources are free and clear of all security interests, mortgages, liens, pledges, charges, claims, or encumbrances of any kind or character: TRIGID has pledged the TRIGID Return Flow Resources to provide water service to certain TRIGID Customers within the TRI Center, but represents and warrants that the delivery of the TRIGID Reclaimed Water Supply to those customers, satisfies and does not contradict any obligation to those customers with respect to TRIGID Return Flow Resources.

ARTICLE VI RENO AND SPARKS PROVISIONS

6.1. Satisfaction of Necessary Conditions. Reno and Sparks shall each take all actions reasonably necessary to satisfy the Necessary Conditions which require performance by Reno and Sparks, respectively.

6.2. Reno and Sparks Permits. Reno and Sparks shall demonstrate, to the satisfaction of TMWA in its discretion, that they have secured appropriate approvals, if any are required, to use Other Return Flow Resources and the Groundwater Component to satisfy Effluent supply and the Return Flow Requirement, where applicable, for all existing Reclaimed Water commitments by Reno and Sparks from TMWRF.

6.3. Cooperation. Reno and Sparks each acknowledge and agree that optimal management of the Managed Resources may require the daily amount of TRIGID Reclaimed Water Supply to fluctuate in accordance with the season, drought conditions, TRIGID demands, and efficient use of Managed Resources, and in some circumstances may require TRIGID to accept delivery of TRIGID Reclaimed Water Supply in excess of daily demands for storage in the Reservoir for later use, or to accept deliveries below daily demands and supplement such deliveries with TRIGID Reclaimed Water Supply previously stored in the Reservoir. Reno and Sparks shall cooperate with TMWA in good faith to facilitate implementation of the Resource Management Services, including coordinating the operations of TMWRF facilities, TMWRF Effluent Production and deliveries of Reclaimed Water with TMWA and maximizing the use of the Available Groundwater Component to minimize the Return Flow Requirement when feasible, and assisting TMWA in any efforts to exchange water resources with third parties to facilitate TMWA's ability to make the TMWA Return Flow Resources available.

6.4. Metering and Reporting. No less than annually, Reno and Sparks shall each provide TMWA with its projected Reclaimed Water demands and TMWRF Effluent Production for the ensuing year. Reno and Sparks shall calculate and provide to TMWA the TMWRF Effluent Production and Reclaimed Water supply on a daily or such other basis as requested by TMWA from time to time. Reno and Sparks shall cooperate with TMWA and provide such information and data on Reclaimed Water demands, facility capacities, and

customer projections to assist TMWA in providing the Resource Management Services. In addition, Reno and Sparks shall provide TMWA with data on all components of TMWRF Effluent Production, including total production, total Reclaimed Water deliveries, and total discharges to the Truckee River.

6.5 Notification. Reno and Sparks shall notify TMWA as soon as practicable if either becomes aware of any condition which affects TMWRF operations or which will materially affect projected TMWRF Effluent Production, or Reclaimed Water demands.

6.6 Groundwater Component. Reno and Sparks shall have priority to use the Groundwater Component, up to the Groundwater Component Limit, for existing and future Reclaimed Water customer demands. Reno and Sparks may allocate the Groundwater Component between them in their discretion, but shall mutually agree for the benefit of TMWA that the aggregate Reclaimed Water commitments of Reno and Sparks shall not exceed the sum of the Groundwater Component Limit and the amount of the Other Return Flow Resources permitted by the Division of Water Resources for Return Flow Purposes. Reno and Sparks shall require dedications of Other Return Flow Resources from customers for any Reclaimed Water demands which exceed the Groundwater Component Limit.

ARTICLE VII TERM AND TERMINATION

7.1 Term. Except as otherwise provided herein, this Agreement shall commence upon the Effective Date and shall have an initial term of approximately thirty (30) years that runs concurrently with the initial term described in Section 6.1 of the TRIGID Agreement. After the initial term of this Agreement, this Agreement may be extended for additional terms (each an “Extension Term”) concurrent with any extension terms of the TRIGID Agreement with the prior written approval of TMWA. If TMWA does not consent in writing to any Extension Term, this Agreement shall automatically terminate upon the expiration of the then current term.

7.2 Termination. In addition to the termination described in Section 7.1, this Agreement may be terminated:

- (a) By written consent of all the Parties;
- (b) If the TRIGID Agreement is terminated for any reason, in which event this Agreement shall automatically terminate on the termination date of the TRIGID Agreement; or
- (c) By TMWA, in its discretion, upon no less than ten (10) years written notice to the other Parties.

In the event this Agreement is terminated, TMWA shall have no further obligations or liabilities hereunder, including without limitation, any obligations with respect to providing the TMWA Return Flow Resources.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1 Entire Agreement. This Agreement constitutes the entire agreement between TMWA and the other Parties pertaining to the provision of the Resource Management Services and TMWA Return Flow Resources in connection with the TRIGID Reclaimed Water Supply, and supersedes all prior agreements, oral or written, express or implied, and all undertakings, negotiations or discussions of TMWA and the other Parties, whether oral or written, all of which are integrated herein; provided, however, the Parties acknowledge that certain other agreements and commitments have been entered between one or more of the Parties other than TMWA, including the TRIGID Agreement, which relate to the performance of Reno, Sparks and/or TRIGID hereunder. This Agreement may not be amended, changed, waived, terminated or modified unless the same shall be in writing and ratified by the governing boards of the respective Parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced.

8.2 Attorneys Fees; Governing Law and Venue. In the event of litigation or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs to be fixed by the court or by the arbitrator. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought in the Second Judicial District Court of the State of Nevada, County of Washoe. The parties consent to the jurisdiction of said court (and of the appropriate appellate court) in any such action or proceeding and waive any objection to venue.

8.3 Severability. If any provisions or part of a provision in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, the same shall not affect any other provision or part of a provision provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, in which case, to the fullest extent possible without defeating the Parties' intentions hereunder, this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein.

8.4 Assignment. Neither Reno, Sparks or TRIGID may assign any rights or obligations under this Agreement without the prior written consent of TMWA. The rights and obligations of TMWA shall not be assignable without the prior written consent of Reno, Sparks and TRIGID.

8.5 Relationship of Parties. Nothing contained in this Agreement is intended to nor shall be deemed to create any partnership, joint venture, agency, fiduciary duty or other relationship between Parties other than with respect to their contractual obligations contained herein.

8.6 Third Party Beneficiaries. There are no express or implied third party beneficiaries to this Agreement, or any obligation, claim, or right arising under this Agreement, and no other person or entity who is not a signatory to this Agreement shall have any obligation, claim, right, or remedy hereunder.

8.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.8 Recitals. The recitals at the beginning of this Agreement are incorporated herein by this reference and made a part hereof as if set forth in full herein.

8.9 Further Assurances. Subject to the terms and conditions hereof, each of the Parties agrees to use commercially reasonable efforts to execute and deliver, or cause to be executed and delivered, all documents and to take, or cause to be taken, all actions that may be reasonably necessary or appropriate to effectuate the provisions of this Agreement.

8.10 Due Authorization. Each party represents that all required authorizations have been obtained to execute this Agreement and for the compliance with each and every term hereof. Each person signing this Agreement warrants and represents to the other parties that he or she has the actual authority to execute this Agreement and bind the party for whom he or she is signing.

8.11 Notice. Unless written notice of a new address or designee is sent in accordance with this subsection, all communications or notices required pursuant to this Agreement shall be in writing and shall be delivered in person, transmitted by facsimile, email, or mailed by certified mail, postage prepaid, return receipt requested, to the individuals at the addresses indicated below. Notices that are mailed are deemed received the third day after they have been postmarked by the U. S. Postal Service.

TRIGID: TRI General Improvement District
8600 Technology Way
Reno, NV 89521
Facsimile: (775) 329-8591
Email: rmsader@robertmsaderltd.com

CITIES: City of Sparks
Attn: City Manager

P. O. Box 857
Sparks, Nevada 89432-0857
Facsimile: (775) 353-2489
Email: sdriscoll@cityofsparks.us

City of Reno
Attn: City Manager
1 East First Street
Reno, NV 89501
Facsimile: (775) 334-2097
Email: newbys@reno.gov

TMWA: Truckee Meadows Water Authority
Attn: General Manager
1355 Corporate Blvd.
Reno, NV 89502
Email: mforee@tmwa.com

8.12 Time. Time is of the essence in all matters relating to this Agreement.

8.13 Liability Limitation. Neither TMWA, Reno or Sparks shall be liable for any failure to deliver TMWRF Supply under the terms of this Agreement due to an order by the Federal Water Master, the State Engineer, any other regulatory authority, restraining order or injunction in a lawsuit challenging this Agreement, or any other cause whatsoever, in each case, to the extent such event is beyond the control of TMWA, Reno or Sparks.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the last date written below.

<p><u>TMWA:</u> TRUCKEE MEADOWS WATER AUTHORITY, a joint powers authority and political subdivision of the State of Nevada</p> <p>By: _____ MARK FOREE, General Manager</p> <p>Dated: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ MICHAEL PAGNI TMWA Legal Counsel</p> <p><u>RENO:</u> CITY OF RENO, a municipal corporation and a political subdivision of the State of Nevada</p> <p>By: _____ HILARY L. SHIEVE, Mayor</p> <p>Dated: _____</p> <p>ATTEST:</p> <p>By: _____ ASHLEY D. TURNEY, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ SUSAN BALL ROTHE Deputy City Attorney</p>	<p><u>TRIGID:</u> TRI GENERAL IMPROVEMENT DISTRICT, a political subdivision of the State of Nevada</p> <p>By: _____ KRIS THOMPSON, President</p> <p>Dated: _____</p> <p><u>SPARKS:</u> CITY OF SPARKS, a municipal corporation and a political subdivision of the State of Nevada</p> <p>By: _____ GENO MARTINI, Mayor</p> <p>Dated: _____</p> <p>ATTEST:</p> <p>By: _____ Teresa Gardner, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ CHESTER H. ADAMS Sparks City Attorney</p>
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Exhibit “A”

TRIGID Agreement

(To be Attached)