

**NORTH TRUCKEE DRAIN RELOCATION PROJECT
INTERLOCAL AGREEMENT
(TRAction Project)**

Article 1 Parties and Definitions

§1.01 Parties

THIS AGREEMENT is by and between

Authority

The Truckee River Flood Management Authority
c/o Flood Project Office
9635 Gateway Drive, Suite A
Reno, Nevada 89521
Attn: Jay Aldean, Executive Director

Sparks

City of Sparks, a municipal corporation
431 Prater Way
Sparks, Nevada 89431
Attn: Neil C. Krutz, P.E., Deputy City Manager

§1.02 Definitions

Executive Director: means the Director of the Truckee River Flood Management Authority as designated by its Board of Directors.

Flood Authority ICA: means the Interlocal Cooperative Agreement (Truckee River Flood Management Project) entered into by Washoe County, the City of Sparks, and the City of Reno on March 11, 2011 and which created and governs the Truckee River Flood Management Authority.

Infrastructure Sales Tax: means a 1/8% sales tax authorized by NRS Chapter 377B and imposed in Washoe County in 1998 to, among other things, finance a flood control project. See Bill 1223, Ordinance No. 1047, enacted in November 1998.

North Truckee Drain Relocation Assets: means all real and personal property acquired by the City of Sparks in connection with the planning and design of the North Truckee Drain Relocation Project, including, but not limited to (i) all real property including all improvements, fixtures, and appurtenances and interests in real property, including water rights, if any were conveyed to Sparks; (ii) all design documents including drawings, plans specifications, surveys, studies, and copies of all requests for proposal and responses and records relating to entering into contracts for the design and construction of the Project; (iii) all soils and environmental reports, all property inspection or

condition reports; (iv) all contracts and contract rights including assignment of all contracts and all performance bonds, payment bonds, letters of credit or cash deposits or other security held as security for contracts, all unexpired warranties and warranty rights; (v) all construction property including all facilities and improvements constructed, all building materials, and supplies including orders, warehouse receipts, bills of lading or other similar documents for such materials and supplies; (vi) all general intangibles; and (vii) all records relating to the acquisition of property, design and construction of facilities including copies of all acquisition due diligence and escrow and relocation records.

North Truckee Drain Relocation Project: means the completion of documents and tasks described in §3.01 and §3.03 of this Agreement regarding the relocation of the terminus of the North Truckee Drain in Sparks, Nevada, to a point downstream, and includes construction of conveyance facilities such as concrete lined channels and box culverts.

USACE: means the United States Army Corps of Engineers.

Article 2 Recitals

¶2.01.A In 2005, the cities of Reno and Sparks, Nevada, Washoe County, Nevada, and the University of Nevada, Reno entered into the “Truckee River Flood Management Project Cooperative Agreement, to establish the Truckee River Flood Management Project to plan, design, construct, operate and maintain certain flood control improvements along the Truckee River to reduce flood damage. The Flood Project Coordinating Committee, created by that agreement, (the “**FPCC**”) adopted a “Locally Preferred Plan” (LPP) in March of 2006 to include a series of flood control features (levees, floodwalls, bridge enhancements, bank terracing and stabilization etc.), ecosystem restoration and recreation plans to implement the Truckee River Flood Management Project.

¶2.01.B The relocation of the North Truckee Drain in Sparks was originally included in the LPP, and was approved by the FPCC as a Truckee River Action Project (TRAction Project) to be started with local funding before entering into a Project Partnership Agreement with the USACE. The relocation of the North Truckee Drain is also an element of the NRS 377B Infrastructure Tax Plan as amended by Washoe County in 2009.

¶2.01.C As a joint development effort, the County of Washoe and Sparks entered into an Interlocal Agreement in December of 2007 in which Sparks agreed to conduct feasibility study and rough design of the North Truckee Drain Relocation Project, and Washoe County agreed to pay \$290,000 to reimburse Sparks. That agreement has been funded and completed.

¶2.01.D In 2008, Sparks implemented the River Flood Protection Rate for the purpose of, among other things, financing the design and construction of the North

Truckee Drain Relocation Project. Design of the North Truckee Drain Relocation Project has been completed.

¶2.01.E On March 11, 2011, Sparks, the City of Reno and Washoe County entered into an Interlocal Cooperative Agreement (Truckee River Flood Management Project) which created the Truckee River Flood Management Authority. The Flood Authority ICA provides, among other things, that Sparks shall convey all of the assets associated with the North Truckee Drain Relocation Project to the Authority after the fees, rates or charges that are to be established by the Authority for the construction, operation and maintenance of the Flood Control Project have been judicially confirmed and the Authority is ready to issue Debt instruments for those purposes. The prerequisites for the transfer of the assets associated with the North Truckee Drain Relocation Project have not yet been met, but the parties wish to nonetheless proceed with the North Truckee Drain Relocation Project construction.

¶2.01.F The North Truckee Drain Relocation Project provides a regional benefit and can be built by the Authority and financed with Infrastructure Sales Tax funds pursuant to NRS 377B and the Amended Infrastructure Tax Plan or regional rates and fees to be imposed and collected pursuant to the Flood Authority ICA.

¶2.01.G As authorized by the Interlocal Cooperation Act (NRS 277.080 – 277.180), the parties desire to enter into an interlocal contract under NRS 277.180 to set forth the purposes, powers, rights, objectives and responsibilities of the parties in order to further the construction of the North Truckee Drain Relocation Project as anticipated and provided for in the Flood Authority ICA.

¶2.01.H Under NRS 268.059 through 268.063, Sparks may enter into joint development and cooperative agreements under NRS Chapter 277 to transfer and develop public property (e.g. the North Truckee Drain Relocation Project assets) for a public purpose without complying with normal requirements for appraisals and advertising for public bids. Under NRS 354.626(2)(b) the Authority may enter into a binding long term cooperative agreement authorized under NRS Chapter 277 pending the appropriation of funds.

NOW THEREFORE in exchange for the mutual covenants contained herein, the parties agree as follows:

Article 3 Construction of the North Truckee Drain Relocation Project

§3.01 *Purposes, objectives, powers, rights and responsibilities.*

¶3.01.A The purpose of the North Truckee Drain Relocation Project is to (i) prepare all planning documents, designs, plans, specifications, environmental reports required by the USACE or other state or federal agencies to satisfy the National Environmental Protection Act, construction bid documents for the design and

construction of the North Truckee Drain Relocation Project, (ii) coordinate design specifications and funding with state and federal agencies, including the USACE, and (iii) construct the North Truckee Drain Relocation project as a flood reduction feature of both the Local Interest Plan and the Local Rate Plan of the Truckee River Flood Management Project, and comply with USACE standards for cost crediting and other potential funding. As provided herein, Sparks will be the lead agency, the Authority will provide financing as set forth below, and the parties will cooperate through a project management team.

¶3.01.B To the extent that any provision of this Agreement may be inconsistent with any provision of the Flood Authority ICA, the terms and provisions of the Flood Authority ICA shall control.

¶3.01.C Although Sparks shall be the lead agency for the construction of the North Truckee Drain Relocation project, representatives of the Authority shall have access to the construction site at any time to inspect the construction and may advise and comment on compliance with plans, agreements and compatibility with the Truckee River Flood Management Project planning documents, plans and protection levels.

§3.03 *Sparks is Lead Agency and Owner; Duties and Responsibilities*

¶3.03.A Sparks shall be the lead agency for the completion of the North Truckee Drain Relocation Project and shall own all documents produced hereunder until such time as the North Truckee Drain Relocation Project Assets are conveyed pursuant to ¶10.05.F of the Flood Authority ICA.

¶3.03.B Duties

1. Until such time as the North Truckee Drain Relocation Project Assets are conveyed pursuant to ¶ 10.05.F of the Flood Authority ICA, Sparks shall, within reasonable times:
 - (i) enter into, perform and enforce all contracts for the design and construction of the North Truckee Drain Relocation Project and all amendments or modifications thereto;
 - (ii) determine appropriate design and characteristics;
 - (iii) prepare and secure appropriate approval of the design
 - (iv) obtain all permits and regulatory approvals;
 - (v) prepare and conduct required public hearings and through oversight and direction of USACE, or other responsible federal or state agencies, obtain appropriate approval of all environmental documents (i.e. Environmental Assessments, Findings of No Significant Impact, and/or Environmental Impact Statement) required by state and federal law, including the National Environmental Pollution Prevention Act;
 - (vi) acquire all properties, easements and rights-of way;
 - (vii) prepare all construction bid documents;

- (viii) make all determinations regarding the selection of contractors and the terms of any construction contracts;
- (ix) oversee and supervise the construction of any and all portions of the North Truckee Drain Relocation Project;

¶3.03.C Legal requirements; payment of penalties and fines.

1. Sparks shall follow all requirements of federal, state and local law as well as all policies, practices and requirements of Sparks with respect to public works projects and agreements in performing its duties hereunder. Without limiting the generality of the foregoing, with respect to all aspects of the North Truckee Drain Relocation Project, Sparks shall comply with NRS Chapter 332 with respect to local purchasing, and with the all provisions of NRS Chapter 338, including contract bidding, the payment of wages, and employment practices.

2. Penalties and fines for violations of the forgoing shall not be paid out of funding proceeds under Article 4 hereof.

¶3.03.D Standards of Performance.

1. Design Standards. Sparks shall coordinate the design standards with and shall comply with the hydrologic, hydraulic and structural standards of USACE.

2. Diligence As the North Truckee Drain Relocation Project is a TRAction project, Sparks agrees to use its best efforts to complete the North Truckee Drain Relocation Project in a timely manner.

Article 4 Financing by the Authority

§4.01 Authority obligation to provide funding.

¶4.01.A Amount and source of funds. Subject to the terms and conditions in this Agreement, Authority agrees to appropriate the sum of **\$4,750,000** in fiscal year 2013-2014 from the available funds in the Infrastructure Sales Tax Fund, and to grant funds from that appropriation to Sparks for the North Truckee Drain Relocation Project.

¶4.01.B Purpose and use of funds. Funds shall be granted as requested from time to time by Sparks for actual, necessary and reasonable costs of the following: constructing North Truckee Drain Project conveyance structures, including the purchase of construction materials, excavation and back-fill. Funds shall be requested by the submittal of payment requests to the Authority pursuant to the procedures set forth in §4.04 of this Agreement.

§4.02 *Prior approval of project design changes.*

¶4.02.A Approval required. Any proposed changes to the design or characteristics of the North Truckee Drain Project which may change or effect the flow rate or hydraulic profile of the North Truckee Drain, impact the hydraulics of the Truckee River Flood Management Project, or interfere with the operation or construction of the Truckee River Flood Management Project shall be directed to the Authority's Executive Director for approval. Sparks shall seek approval of all proposed design changes for which approval is required under the terms of this paragraph no later than five business days prior to any notice to the contractor of approval of the plan changes or change orders. The Authority shall not unreasonably withhold such approval as provided in this Agreement. The requirements of this section notwithstanding, Sparks shall use its best efforts to inform the Authority when it is anticipated that changes may be necessary to the design or to any contract, agreement or commitment and to discuss with the Authority the nature of the changes as soon as is practicable.

¶4.02.B Submission of design plan changes, contracts, agreements and commitments for approval. Proposed design plan changes that are subject to review by the Executive Director of the Authority pursuant to ¶ 4.02.A of this Agreement shall be submitted by providing a copy, either physically or electronically, to the Authority directed to the attention of the Authority's Executive Director, Senior Financial Analysis and General Counsel.

¶4.02.C Timeframe for approval. The Executive Director or his designee shall review and respond to all design plan changes, submitted for review and approval pursuant to ¶ 4.02.A within 5 working days from the date submitted. If no response is received from the Executive Director or his designee within 5 working days from submittal of the design plan changes, they shall be deemed approved.

¶4.02.D. Approval criteria. Design plan changes, may be rejected for funding under this Agreement only if there is an un-remedied breach of this Agreement by Sparks, or if the Authority reasonably believes that the design change is inconsistent with the overall design for the Truckee River Flood Project, that the proposed design change will not provide the needed flood protection levels, that the design change will make the North Truckee Drain unnecessarily difficult to maintain after construction, or that the proposed design change is unreasonable, unnecessary or will likely be so expensive as to exceed this funding commitment.

§4.04 *Submission, approval and payment of payment requests.*

¶4.04.A Individual Payment Requests. Individual Payment Requests shall be submitted to the Authority to the attention of its Executive Director and Senior Financial Analyst.

¶4.04.B Supporting documentation. Individual payment requests shall be accompanied by proof of payment and sufficient supporting documentation for the Executive Director to determine if funds are properly payable under this Agreement.

¶4.04.C Warranty. Sparks warrants and represents that each request for payment is for funds actually spent by Sparks pursuant to the requirements of an approved contract or commitment.

¶4.04.D Rejection of Individual Payment Requests. Individual payment requests may be rejected by the Authority only if (i) there is a material breach of this Agreement by Sparks, (ii) Sparks has failed to comply with §3.03, ¶4.01.B or §4.02 of this Agreement; (iii) payment of the amount would cause the Authority to exceed the funding commitment hereunder; or (iv) the Authority reasonably believes that the amount of the request is for an unauthorized purpose or is excessive.

¶4.04.E Payment. Payment requests shall be paid within 30 days of receipt of properly documented requests by Sparks.

Article 5 Mutual Obligations; Relationship of Parties; Indemnifications.

§5.01 *Books, records, inspection and audit; access.*

1. Each party agrees to keep adequate and accurate books and records with all aspects of its performance under this Agreement and the administration of the North Truckee Drain Relocation Project, and to keep such records for a period of five years from the completion of the construction of the project. Such records shall be kept in compliance with USACE standards and requirements to preserve the ability of the Authority to seek credit pursuant to Section 104 of Public Law 99-662 for amounts expended for work done on the North Truckee Drain Relocation Project as part of the local sponsor's cost share for USACE's regional Truckee Meadows Flood Control Project located in Washoe County, Nevada.

2. Each party shall allow authorized representatives of the other full and free access to their offices and where project work is performed and to the accounts, records and books, including the right to make copies from such accounts, records and books.

3. Each party agrees to truthfully and fully cooperate with any audit of its books and records and performance hereunder by the other party or by a federal or state agency regulating or providing funding for this project. Sparks shall maintain and preserve all records until such time that the North Truckee Drain Relocation Project is turned over to the Authority pursuant to the terms of the Interlocal Cooperative Agreement (Truckee River Flood Management Project) of March 11, 2011. All such records shall be turned over to the Authority as part of the conveyance of the North Truckee Drain Relocation Project to the Authority.

§5.02 Status of Parties, Officials and Employees.

¶5.02.A Nothing in this Agreement creates or implies a partnership, joint venture or similar association. The parties are independent of one another, and neither is an agent of or obligated to the other except as specifically provided herein.

¶5.02.B No official or employee of any party to this Agreement shall be personally liable to any other party or any successor in interest, in the event of any default or breach by the party or for any amount which may become due to any other party or its successor, or as a result of any representation (except any representation regarding the authority to execute this Agreement), warranty or obligation under the terms of this Agreement.

§5.03 Indemnifications.

¶5.03.A To the fullest extent allowed by law, and without waiving any immunities (except as provided under the law of Nevada, including NRS 41.0305 through NRS 41.039, as amended from time to time) that may be available, each party (the “Indemnifying Party”) shall indemnify, hold harmless and defend the other party (the “Indemnified Party”) from and against all liability to the extent caused by an act, error or omission of the Indemnifying Party or a Related Party arising out of the administration of this Agreement.

¶5.03.B Definitions.

“**Act, error or omission**” includes acts, failure to act, errors, or omissions that constitute negligence, willful tortious conduct, or for which strict or imputed liability may be imposed as determined by a court of competent jurisdiction under applicable law, and further includes breaches of this agreement and/or violations of law.

“**Arising out of the administration of this Agreement**” means the performance of any task, obligation, responsibility or the pursuit of any right contemplated under this Agreement.

“**Claims and liability**” means all third party claims, actions, damages, losses, judgments, injuries, costs and expenses, (including those paid to settle the case) including but not limited to attorneys’ fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom) and other economic damages.

“**Defend**” includes the obligation to defend litigation at the Indemnifying Party’s sole expense using counsel that is reasonably acceptable to the Indemnified Party. Each Indemnified Party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the Indemnified Party is indemnified hereunder.

“**Related Party**” includes all officers, employees, agents, contractors and subcontractors of the Indemnifying Party who are acting within the scope of their

assigned and lawful duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

¶5.03.C Conditions. Each indemnified party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Any party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement with respect to any act, error or omission which occurred before expiration or early termination.

Article 6 Timing; performance; breach and remedies.

§6.01 *Time schedule.*

This agreement terminates when the funding obligation set forth in ¶4.01.A is fully expended or is sooner terminated or discharged. Regardless of whether the funding obligation has been fully expended this Agreement shall expire on June 30, 2015, unless extended by written agreement of the parties.

§6.02 *Timing; further assurances; standards for approval.*

¶6.02.A Timing. Time is of the essence in the performance of this Agreement. Unless otherwise specified, the term “days” means calendar days. If a deadline falls on a weekend or holiday then performance is due on the first business day of the recipient thereafter. Unless otherwise specified, performance is due by the later of 5 p.m. Sparks, Nevada time or close of business of the recipient on the day it is due.

¶6.02.B Further assurances. Each party agrees to take all necessary action to enter into, execute and deliver any and all written documents necessary to carry out the terms of this Agreement, and for the development of the Project in accordance with the terms of this Agreement.

¶6.02.C Standards of approval. Unless otherwise specified (such as with the words "sole discretion") wherever this Agreement requires the approval of the governing body of a party, or any of a party's officers, agents or employees, such approval shall not be unreasonably withheld, delayed or conditioned. The governing bodies of the parties to this Agreement are governmental bodies whose decisions are legislative functions that may be subject to public hearings and input, and, except as otherwise provided herein, shall have sole and absolute discretion to approve or disapprove any matter submitted to them provided, however, that decisions are not procured by fraud or bribery, or are arbitrary, capricious or an abuse of discretion.

§6.03 *Nonappropriation of funds*

This Agreement extends beyond the terms of the members of the Authority’s Board of Directors who are presently in office and are voting on its approval, and as a result, under NRS 244.320, unless otherwise provided by law, this Agreement is binding beyond those terms of office only to the extent that money is appropriated for the performance of this Agreement or for a like item or service. If no funds or insufficient funds are appropriated and budgeted by future governing bodies or are otherwise unavailable by any means whatsoever in any fiscal year to make payments or honor obligations under this Agreement, the Authority shall immediately notify Sparks of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which appropriations of existing funds were made, without penalty or expense to Authority of any kind whatsoever.

§6.04 *Default and Remedies.*

¶6.04.A Excuse due to force majeure.

1. Except as provided elsewhere herein, if an event of *force majeure* makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the event of force majeure provided that the obligated party (i) within a reasonable time after the commencement of the force majeure notifies the other party of the nature of the event of force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default.

2. An event of *force majeure* is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; delay caused by unusually severe or extreme weather; lack of transportation attributable to any of these; or (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of an alleged violation of the prevailing wage provisions in this Agreement, if any); (iii) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

¶6.04.B Default. Subject to Section 6.02, and ¶6.03.A, a default occurs when (i) a party repudiates, breaches or fails to perform any material obligation, term or provision in this Agreement including a failure to perform any requirement in accordance with any schedule attached hereto; (ii) a party who is responsible to cause a material event to occur fails to have such event occur by the time required; (iii) any representation

of a material fact expressed herein was false at the time it was made, or, if a continuing representation, becomes false as a result of a subsequent event or occurrence; or (iv) any event otherwise described in this Agreement as a breach or default occurs.

¶6.04.C Notice and Right to Cure. Unless otherwise specified in this Agreement, and unless prohibited by law, in the event of the default, the non-defaulting party shall provide written notice of such default and the specific action required to cure such default and the defaulting party shall have thirty (30) days from the date that the notice is deemed given to cure the default; provided however, that in the event such default is not capable of being cured within said time period but is capable of being cured, the defaulting party has substantially commenced to cure said default and diligently pursues cure, the defaulting party shall be granted an additional period not to exceed sixty (60) days to so cure said default

¶6.04.D Remedies

1. In general. If the event of a material default is suffered or caused by any party and not cured within the period of time specified, the non-defaulting party may, subject to any specific provision regarding remedies herein, (i) suspend any counter-performance due hereunder until the default is cured; (ii) terminate this Agreement; (iii) pursue any other remedy specifically provided in this Agreement, and/or (iv) bring an action for damages or equitable relief.

2. Remedies cumulative. All remedies stated in this Agreement are cumulative with each other and with any remedy afforded in law or equity. The election of any remedy does not constitute a waiver of any other remedy.

¶6.04.E Attorney's Fees and Costs. If any party hereto institutes any action or proceeding (including arbitration, if authorized) against the other or others arising out of or relating to this Agreement, reasonable attorney's fees and costs may be awarded to the prevailing party, as determined by or otherwise allocated at the discretion of the Court (or arbitrator).

¶6.04.F Waivers Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future.

Article 7 General Provisions.

§7.01 *Assignment; Delegation; Binding Effect*

This Agreement shall be binding on and runs to the benefit of the parties, their respective successors and any assignees or delegates if the assignment or delegation is permitted.

Unless otherwise specifically identified in this Agreement, there are no third party beneficiaries intended by this Agreement and no third parties have any standing to enforce any of the provisions of this Agreement.

§7.02 *Notices*

¶7.02.A Unless otherwise provided herein, formal notices, demands and communications between the parties must be in writing and must be sent via certified or registered mail, return receipt requested, or by overnight courier to the addresses stated in Article 1 above, or to any address or number subsequently communicated to the sending party in writing. Failure to provide additional notices indicated in Article 1 does not make service to the party defective.

¶7.02.B If notice is sent by registered or certified mail to the correct address, postage prepaid, it will be deemed sufficiently given when actually received by the addressee or three business days after it is received by the U.S. Post Office as indicated on the receipt, whichever is earlier.

¶7.02.C If notice is sent by courier, or overnight delivery service (e.g., Federal Express, UPS Overnight, U.S. Postal Priority Mail), it will be deemed sufficiently given when delivered to the address as indicated in the records of the courier or service.

§7.03 *Applicable Law; Severance of Unenforceable Provisions; Non-merger.*

¶7.03.A Applicable law, jurisdiction and venue. This Agreement shall be construed under and governed by the laws of the State of Nevada, and any action to enforce it shall be brought in the Second Judicial District Court for the State of Nevada.

¶7.03.B Severance of unenforceable provisions. Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law, taking into account permissible waivers or provisions which may be upon agreement of the parties. If any term or provision of this Agreement or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this Agreement. In any event, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected. To prevent windfall or unintended consideration, if any term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter-performance, condition, or corresponding consideration.

§7.04 *Interpretation of agreement.*

¶7.04.A Interpretation of Agreement. Titles and headlines of this agreement are intended for editorial convenience and are not to be construed as a part of this agreement.

The word “include” or “including” is not intended as a limitation and shall be construed to include the words “but not limited to.” Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural. Any reference to another document (statute, resolution, plan, contract etc) includes the reference to all amendments thereto. Any reference to a numbered provision in this Agreement or any other reference which is incorrect shall be deemed to refer to the appropriate provision.

¶7.04.B No drafting assumptions. The Parties hereto were each advised by counsel in drafting and negotiating this agreement. No presumptions against or in favor of any party are appropriate based on who drafted this Agreement or any provision herein.

§7.05 Implementation and modification of Agreement

¶7.05.A Authority to Implement.

1. The Authority’s Executive Director shall have the authority to approve disbursements of all appropriated funds and make all approvals under this Agreement except increases in the amount of Authority’s commitment hereunder, and those specifically reserved to the governing body under this Agreement or applicable law.

¶7.05.B This agreement may be modified or amended only upon the approval of the governing bodies of the Parties.

§7.06 Entire Agreement; Counterparts; Approval

¶7.06.A Each person who signs this Agreement below warrants and represents that this Agreement has been duly approved by the governing bodies of the parties and that he or she has the actual authority to bind the principal for which he or she signs and that his or her signature has the effect of binding the party.

¶7.06.B This Agreement (together with attachments and documents incorporated by reference) integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all representations, warranties, promises or statements made during the discussion and formation of this Agreement, and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All attachments hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

¶7.06.D This Agreement may be executed in counterparts and is deemed duly executed when original signature pages of all parties are executed and delivered.

(SIGNATURE PAGES FOLLOW)

INTERLOCAL AGREEMENT
(North Truckee Drain Relocation Project)

Counterpart Signature Page

AUTHORITY

Truckee River Flood Management Authority,
a joint powers authority, a body corporate and politic,
and a public agency

By _____

Date _____

Ron Smith, Chairman
TRFMA Board of Directors

INTERLOCAL AGREEMENT
(North Truckee Drain Relocation Project)

Counterpart Signature Page

SPARKS

City of Sparks, a municipal corporation

By _____
Geno Martini, Mayor

Date _____

Attest

By _____
City Clerk

Date _____

Approved as to Form:

By _____
City Attorney