

**BOARD OF COUNTY COMMISSIONERS, WASHOE COUNTY, NEVADA
BOARD OF DIRECTORS, TRUCKEE MEADOWS WATER AUTHORITY**

JOINT MEETING

TUESDAY

10:00 A.M.

DECEMBER 9, 2009

PRESENT:

David Humke, Chairman, Washoe County Commission
Bonnie Weber, Vice Chairperson, Washoe County Commission
Bob Larkin, Washoe County Commissioner and TMWA Director
Kitty Jung, Washoe County Commissioner
John Breternitz, Washoe County Commissioner

Mike Carrigan, Chairman, Truckee Meadows Water Authority (TMWA)*
David Aiazzi, Vice Chairman, TMWA
Geno Martini, TMWA Director
Michael Cate, TMWA Director
Tom Young, TMWA Director

ABSENT:

Bob Cashell, TMWA Director

The Boards convened at 10:07 a.m. in special session in the Commission Chambers of the Washoe County Administration Complex, 1001 East Ninth Street, Building A, Reno, Nevada, with TMWA Vice Chairman David Aiazzi presiding. Also present on behalf of the Truckee Meadows Water Authority were: Mark Foree, General Manager; Sylvia Harrison, Legal Counsel; Jeff Tissier, Chief Financial Officer; and Corinne Cassell, Executive Assistant. Also present on behalf of Washoe County were: Amy Harvey, Washoe County Clerk; Dave Childs, Assistant County Manager; Melanie Foster, Legal Counsel to the Board of County Commissioners; Rosemary Menard, Director of the Department of Water Resources; John Sherman, Finance Director; and Garrett Gordon, Special Counsel to the Department of Water Resources. Following the Pledge of Allegiance to the flag of our Country, the roll was called and the Boards conducted the following business:

09-1313 AGENDA ITEM 3

Agenda Subject: "Approval of the agenda."

There was no public comment on this item.

On motion by Director Martini, seconded by Commissioner/Director Larkin, which motion duly carried with Chairman Carrigan and Director Cashell absent, it was ordered that Agenda Item 3 be approved.

09-1314 AGENDA ITEM 4

Agenda Subject: “Public comment – limited to no more than three minutes per speaker.”

There was no response to the call for public comment.

09-1315 AGENDA ITEM 5

Agenda Subject: “Approval of minutes of October 27, 2009.”

There was no public comment on this item.

On motion by Commissioner/Director Larkin, seconded by Commissioner Breternitz, which motion duly carried with Chairman Carrigan and Director Cashell absent, it was ordered that Agenda Item 5 be approved.

09-1316 AGENDA ITEM 6

Agenda Subject: “Presentation, discussion and possible approval and execution of: 1) the Interlocal Agreement Governing the Consolidation of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority, including new sections pertaining to risk allocation principles and possible accelerated path to merger; and 2) the Resolution Approving the Interlocal Agreement and providing for other matters properly related thereto. And, if approved, authorize the submission of the Interlocal Agreement to the Nevada Attorney General for approval.”

Mark Foree, General Manager of TMWA, indicated staff was previously directed by both Boards to develop an Interlocal Agreement (ILA) governing the merger of the Washoe County Department of Water Resources (DWR) into the Truckee Meadows Water Authority (TMWA). He introduced the members of the interagency team who were led by TMWA Legal Counsel Sylvia Harrison in the drafting of the ILA, and thanked them for their tireless efforts over the last several weeks.

***10:10 a.m.** Chairman Carrigan arrived at the meeting.

Mr. Foree said the result of the team’s efforts was a very complete and concise document that would guide the merger process and provide long-term benefits to customers and to the community. He stated several interagency engineering and operations teams had been conducting facility tours, getting to know each other, and exchanging information – all aimed at developing an operating plan that would determine how to most efficiently and effectively operate the combined systems as one.

Rosemary Menard, Director of DWR, agreed with Mr. Foree's comments about the team's hard work and effectiveness. She noted the ILA before the Boards was the result of some stellar work done with the intention of trying to balance the issues and make an agreement that would serve both parties. She stated the ILA recommended by staff would put both agencies on a good path to go forward and also laid out additional work to be done. Additional work would include an Addendum to the ILA, either an Accelerated Plan or a Phased Plan utilizing an Operating Agreement, and a Closing Memorandum. She commented that staff worked hard to address all of the key issues that would lay the foundation and the framework for how to move forward.

Sylvia Harrison, Legal Counsel for TMWA, thanked Garrett Gordon and Carol Kline of Lewis and Roca, LLP, Special Counsel to DWR, for their help in putting together the ILA. She stated the ILA provided the general framework for the complicated merger process and committed the two agencies to going forward in good faith to try to get the merger accomplished. She noted the process would include identifying the specific assets that would ultimately be transferred to TMWA and making sure risk allocation was done appropriately between the two agencies.

Ms. Harrison said staff came up with the idea of allowing the due diligence process to unfold after the execution of the ILA. Following satisfactory completion of due diligence as required to identify the assets and contracts to be assumed and the possible liabilities of both organizations that might affect the merger, an Addendum to the ILA would be developed and separately executed. She indicated both governing boards would have to approve the Addendum, which would consist of schedules describing the assets to be transferred and contracts to be assumed, preliminary determinations of excluded and assumed liabilities, and a schedule of priorities for certain material conditions the County would be expected to either cure or mitigate as a condition of going forward. She pointed out the due diligence process had not progressed far enough to know what the schedules and conditions might look like. She stated there might need to be specific strategies identified in the Addendum to address any contingencies found during the due diligence process. She emphasized the governing boards would have a chance to review the Addendum carefully and make sure it worked for both agencies.

Ms. Harrison observed the ILA addressed risk allocation guidelines in some detail. When TMWA assumed all of the operations of the DWR water utility, she explained the assets would be transferred for no cash consideration on an "as is, where is" basis, subject to any conditions identified in the Addendum. She pointed out the management of liabilities would be guided by the extent to which the DWR water utility had passed financial risks on to its customers, as opposed to those that were general obligations of the County. She noted the clear intent of Washoe County was for the DWR water utility to cease to exist and for the County to minimize its continuing exposure with respect to the water utility business. The Addendum would be created as a mechanism to allocate risks appropriately. She stated the risk managers from both agencies had requested that both agencies be listed as named insureds on each agency's insurance policies during the interim period.

Once the agencies were able to meet the financial conditions necessary for a final merger, Ms. Harrison indicated the schedules and liabilities would be revisited in a Closing Memorandum, which would also be a separately executed document. She said a second opportunity to develop the schedules was provided because it was not known whether a final merger could be accomplished on an accelerated basis or would take five to seven years to complete. It was understood that the schedules developed for the Addendum over the next six months would be subject to the Closing Memorandum before the merger was final.

Ms. Harrison noted past discussions centered around the concept that TMWA would assume the DWR water utility operations pursuant to an Operating Agreement, with the hope of getting the Operating Agreement in place by the beginning of the 2010-11 fiscal year. She stated some alternative financial opportunities recently unfolded that allowed the consideration of two possible alternatives for going forward with the merger: (1) a Phased Plan in which TMWA would contract for the DWR water utility operations under an Operating Agreement for some significant duration of time; or (2) an Accelerated Plan that might allow the merger to close sooner.

Jeff Tissier, Chief Financial Officer of TMWA, discussed the possibility of an accelerated path. He said an opportunity was recently brought forward by an investment bank in which TMWA's short-term note program might be used to restructure DWR's remaining debt from publically issued bonds. He cautioned there was not yet any definitive information available. He explained the goal was to provide some financial flexibility outside of the long-term bond market to satisfy certain material conditions. He pointed out such an opportunity might allow the final merger to take place in an accelerated fashion with a definitive close date. Given the complexities of due diligence, he stated a definitive close date would be extremely helpful. He said more information about the opportunity would probably be available within four to eight weeks.

John Sherman, Finance Director of Washoe County, indicated some fairly aggressive work was being done to facilitate other elements of an accelerated path. He clarified that debt related to the DWR water utility was previously pledged to revenues from water, sewer, reclaimed water, and stormwater. He commented the challenge was to split things out so that only the water-related debt was paid by water revenues. He noted over half of the debt associated with DWR's largest water/sewer bond was recently defeased because it no longer made financial sense to use the funds to build additional water treatment capacity. He stated a bank that held some stormwater/sewer bonds was being approached in an effort to separate out the pieces that had been pledged to water revenues. The State would also be approached about the possibility of bifurcating water and sewer debt that had been issued through the State Revolving Fund. He said it was possible to do an accelerated closing if all of those elements could be accomplished.

Ms. Harrison pointed out the Accelerated Plan would allow the agencies to avoid complex and costly negotiations associated with the Operating Agreement. She noted it would become necessary to get the Operating Agreement into place if the

financial opportunities for an accelerated closing did not appear to be persuasive during the first quarter of 2010. She stated the Board of County Commissioners would continue to be the governing body under the Operating Agreement (Phased Plan) because the assets and customers would still be owned by Washoe County. She indicated such a complex situation could be avoided through the Accelerated Plan.

Commissioner/Director Larkin said he was extremely pleased with the progress made on the ILA and the option for the Accelerated Plan. He asked about the transition management team referenced under Section 7.2 on page 19 of the ILA. Ms. Menard replied transition management was already being implemented. She stated work was underway on the due diligence process, and team leads from each agency were working on operations, engineering, water quality, and other sets of issues relevant to a typical utility. She indicated very careful work was being done with a mixed team on communication, and with Human Resources on staff issues. Although there was not a transition management planning document, a team-based and interagency-based strategy was being used to build engagement with employees and key staff as the process moved forward. She said the strategy would be expanded as additional issues needed to be addressed over time. For example, work would need to be done in information technology to bring the two systems together. She explained the concept would be to put together an interagency team, have them do an assessment, and give recommendations for proceeding further. Mr. Foree pointed out workshops were being scheduled, and the first one would take place later in the day to present TMWA's benefits to DWR employees who might be affected by the merger.

Commissioner/Director Larkin referenced Section 7.3. He asked if every effort was being made to ensure that all employees remained on the rolls and were kept foremost in mind as the transition and merger went forward. Ms. Menard noted there were no developer fees coming in to support certain kinds of activities and a separate work-related decision would be made about whether it was necessary to maintain the current staffing levels. She indicated work was underway on an operations plan for a combined utility that would help define specific employee needs, with the idea that DWR employees would be put into those positions. She stated every single employee could not be guaranteed they would have a job, although the decisions would be driven by the general economic conditions being experienced by all local government agencies rather than by the consolidation.

Commissioner/Director Larkin wondered if there were any financial hiccups to prevent the process from moving forward. Ms. Harrison noted the purpose of the due diligence process was to identify any contingent liabilities that might have a significant impact on the merged entity and to ensure there was a plan to address them in the Addendum. She acknowledged things might be discovered that would become a condition of the final close, but no one was currently aware of anything that would prevent a merger.

Chairman Carrigan read the following from the due diligence and risk allocation section on page 3 of the staff report: "The Addendum will include a priority

list of conditions that must be addressed as a condition of closing.” He observed Section 2.3 on page 7 of the ILA provided for assets to be transferred “as is, where is.” He questioned how the term “addressed” would be defined. He commented he did not want to get stuck in the same position TMWA had previously been in when it took over some assets from Sierra Pacific Power Company and found a dam down and a hydroelectric plant stranded. Ms. Harrison said that was the reason for the Addendum. She explained priority material conditions were things that had to be cured or mitigated, although it was not possible to define the exact language until the conditions were identified. For example, she stated TMWA would want to see a dispute in a developer agreement resolved, and a system problem with significant financial consequences would require a plan to address the problem and allocate the costs fairly. She said it was the intention to be quite specific as to how each condition would be addressed, and to work out the plans when the conditions were known. If a point was reached where it was in the best interests of both organizations to close the merger with some of the issues still unresolved, she stated TMWA would maintain the ability to keep separate rate structures in place for separate classes of customers. She acknowledged that was not the most desirable condition, but the ILA preserved such an opportunity in the event it was necessary in order to maintain an equitable distribution of risks. She observed the timeframe for completing the merger had always been viewed as very flexible. She indicated the conditions of close would be very carefully articulated and the full legal merger would only go forward when it was financially appropriate to do so.

Vice Chairman Aiazzi asked whether all of the other conditions under Section 7, beginning on page 18 of the ILA, would still apply under the Phased Plan if the agencies did not go forward with the Accelerated Plan. Ms. Harrison said that they would. Vice Chairman Aiazzi referred to language under Section 7.1 that stated: “...meeting the Necessary Conditions will be feasible during calendar year 2010, or a reasonable period thereafter...” He pointed out the agencies had originally been trying to get an interim Operating Agreement in place by June 30, 2010 and wondered if that was now being put off for a feasibility study through the whole calendar year of 2010. Ms. Harrison stated the point of Section 7.1 had been to make a decision by the end of the first quarter of 2010 about whether to go forward with the Accelerated Plan. If the Accelerated Plan looked feasible, she indicated the Finance staff would indicate how quickly it could get done. She pointed out the documentation associated with defeasance and financing might not be available within the next six months, but the hope was to do it as soon as possible. She reiterated that it made sense to avoid the Operating Agreement if possible because it would be a complex document that would take a lot of staff and legal time to develop. For example, she noted it was not sensible to implement the Operating Agreement for a six-month period of time. She clarified for Vice Chairman Aiazzi that a determination about whether the Accelerated Plan was feasible would be made during the first quarter of 2010 and then both governing boards would take action to approve the timeframe and process. Vice Chairman Aiazzi asked whether the Cities of Reno and Sparks would have to approve. Ms. Harrison stated they would not.

Vice Chairman Aiazzi noted the language in the ILA said that TMWA contemplated hiring Washoe County employees but did not give them any specifics about

whether they would have a job or not. He suggested each entity should deal with potential layoffs due to the economic times before the merger so that TMWA would hire all of the DWR employees at the time of the merger. Ms. Menard clarified that Section 7.3 of the ILA was written to provide framework and policy guidance rather than any specific details. She indicated there had already been communication to the DWR employees in which the process for addressing employee transition issues was laid out, including a list of potentially affected positions. Vice Chairman Aiazzi asked Ms. Menard about her employment status. Ms. Menard replied that she would probably be staying with the County, but was not worried about her status.

Vice Chairman Aiazzi wondered if there was anything in the ILA that required both parties to maintain their facilities. He commented maintenance should not just stop if the process was going to take more than a year or so. Ms. Harrison replied there was a specific covenant in Section 3 that both parties would maintain their facilities. Vice Chairman Aiazzi questioned whether there was anything specific about the level of maintenance; for example, that each agency spend the same amount of money as it had the previous year. Ms. Menard stated it was not good utility practice for DWR to stop investing in its water utility. Vice Chairman Aiazzi said he would have expected Sierra Pacific to think the same thing, but it had not turned out that way. Ms. Menard observed Sierra Pacific had been in another line of business. She indicated DWR had an obligation to maintain and operate its facilities. She pointed out virtually all of the system facilities had to be used to meet the customers' needs, so it was not possible for DWR to selectively cease maintenance on certain wells. She noted DWR operated from an independent funding source and skipping maintenance did not save any money in the County's General Fund. Mr. Tissier clarified that the necessary conditions in Section 3 of the ILA were related to bond indentures. He agreed with Ms. Menard there were prudent utility practices expected of both agencies.

Vice Chairman Aiazzi said he heard from employees that they were worried about how seniority would be handled. Ms. Menard indicated the plan for dealing with employee issues had to be negotiated with the unions. She stated such negotiations were tentatively scheduled to take place during February, March, and April of 2010. She referred to Mr. Foree's earlier remarks that there was currently a lot of information being exchanged and the labor unions were being engaged. She noted the plan was to tee up the issues and then move on to the next level of detail. Vice Chairman Aiazzi asked whether the merger could move forward if the unions did not agree. Ms. Menard said she did not believe the unions had veto power, but the terms and conditions had some degree of significance.

There was no response to the call for public comment.

On behalf of Washoe County, on motion by Commissioner Larkin, seconded by Commissioner Breternitz, which motion duly carried, it was ordered that:

1. The staff report for Agenda Item 6 be accepted.

2. The Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority be approved and executed as specified. The Interlocal Agreement for same is attached hereto and made a part of the minutes thereof.
3. The Resolution approving the Interlocal Agreement be adopted and executed. The Resolution for same is attached hereto and made a part of the minutes thereof.

On behalf of the Truckee Meadows Water Authority, on motion by Director Larkin, seconded by Director Martini, which motion duly carried with Director Cashell absent, it was ordered that:

1. The staff report for Agenda Item 6 be accepted.
2. The Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority be approved and executed as specified. The Interlocal Agreement for same is attached hereto and made a part of the minutes thereof.
3. The Resolution approving the Interlocal Agreement be adopted and executed. The Resolution for same is attached hereto and made a part of the minutes thereof.

09-1317 AGENDA ITEM 7

Agenda Subject: “Public comment – limited to no more than three minutes per speaker.”

There was no response to the call for public comment.

09-1318 AGENDA ITEM 8

Agenda Subject: “Staff comments.”

There were no staff comments.

09-1319 AGENDA ITEM 9

Agenda Subject: “Board comments.”

Commissioner/Director Larkin stated approval of the Interlocal Agreement was a historic event. He said it was a testament in the community that things

were done right and there were the right teams to do it. He noted the viewing public was seeing their governments work for the better to reduce costs and to increase efficiency.

Commissioner Jung thanked staff and particularly thanked Ms. Menard for bringing her up to speed very quickly in an area that was very complex. She hoped that consolidation would not be the final leg but would be the beginning of a more holistic approach with the community's most precious utility – water.

Chairman Humke remarked the agreement was a giant step forward in eliminating duplication and in bringing sanity to the delivery of fresh water services.

* * * * *

10:44 a.m. There being no further business to discuss, on motion by Commissioner Breternitz, seconded by Commissioner Jung, which motion duly carried with Director Cashell absent, the meeting was adjourned.

ATTEST:

DAVID HUMKE, Chairman
Washoe County Commission

AMY HARVEY, County Clerk and Clerk
of the Board of County Commissioners

ATTEST:

MIKE CARRIGAN, Chairman
Truckee Meadows Water Authority
Board of Directors

CORINNE CASSELL,
Administrative Assistant
Truckee Meadows Water Authority

*Minutes Prepared by:
Lisa McNeill, Deputy County Clerk*

RESOLUTION NO. 09-1316

A RESOLUTION APPROVING THE INTERLOCAL AGREEMENT GOVERNING THE MERGER OF THE WASHOE COUNTY DEPARTMENT OF WATER RESOURCES' WATER UTILITY INTO THE TRUCKEE MEADOWS WATER AUTHORITY AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

* * * * *

WHEREAS, The Truckee Meadows Water Authority (TMWA) and Washoe County are both engaged in the distribution, sale and delivery of water service to residents within their respective service areas of the Truckee Meadows Community; and

WHEREAS, At the recommendation of the Western Regional Water Commission, the respective governing boards of TMWA and Washoe County have requested that studies be conducted to determine whether merger of Washoe County's Department of Water Resources (DWR) Water Utility into TMWA could advance the establishment of an integrated water resources management system and have significant benefits for the community, including but not limited to long term savings, more efficient resource use, better stewardship of water resources, more efficient use of facilities and facility planning, expanding the benefits of drought storage to all Truckee Meadows customers, and more predictable and efficient customer services benefits for the Truckee Meadows Community; and

WHEREAS, After due consideration of all appropriate factors, the Washoe County Board of County Commissioners and the TMWA Board of Directors have determined a cooperative agreement governing merger of the DWR Water Utility into TMWA is in the best interests of the their respective customers and the Truckee Meadows Community; and

WHEREAS, NRS 277.045 provides that two or more political subdivisions may enter into cooperative agreements for the performance of any governmental function; and

WHEREAS, NRS 277.045 further provides that every such cooperative agreement must be adopted by formal resolution or ordinance of the governing body of each political subdivision included, and must be attached hereto as an exhibit; and

WHEREAS, The Washoe County Board of County Commissioners desires to approve and execute the Interlocal Agreement governing merger of the DWR Water utility into TMWA; now, therefore, be it

09-1514

RESOLVED, By the County of Washoe, that:

SECTION 1. A true and correct copy of the Interlocal Agreement governing merger of the DWR Water utility into TMWA is attached in full hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Interlocal Agreement is hereby approved, and Washoe County staff are authorized and directed to perform any term, condition, duty or obligation necessary to effectuate the Interlocal Agreement.

SECTION 3. All actions previously taken by Washoe County and its officers and employees to carry out the purposes of this Interlocal Agreement and Resolution are hereby approved and ratified.

SECTION 4. This Resolution shall be effective upon passage and adoption.

Upon motion by Commission member Larkin seconded by Commission member Breternitz the foregoing Resolution was passed and adopted this 9th day of December, 2009, by the following vote:

ADOPTED this 9th day of December, 2009 by the following vote:

AYES: Humke, Weber, Larkin, Jung, Breternitz.

NAYS: None

ABSENT: None

ABSTAIN: None

David Humke

David Humke, Chairman
Washoe County Commission

STATE OF Nevada)

COUNTY OF Washoe) ss:

On this 8th day of January, 2010 before me a Notary Public in and for the County of Washoe, State of Nevada, personally appeared DAVID HUMKE known to me to be the person(s) described herein and who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily on behalf of Washoe County, for the uses and purposes therein mentioned.

Rita Lencioni

Notary Public



21114

TRUCKEE MEADOWS WATER AUTHORITY
(TMWA)

RESOLUTION NO. 151

**A RESOLUTION APPROVING THE INTERLOCAL AGREEMENT
GOVERNING THE MERGER OF THE WASHOE COUNTY DEPARTMENT
OF WATER RESOURCES WATER UTILITY INTO THE TRUCKEE
MEADOWS WATER AUTHORITY AND PROVIDING FOR OTHER
MATTERS PROPERLY RELATED THERETO.**

WHEREAS, the Truckee Meadows Water Authority (TMWA) and Washoe County are both engaged in the distribution, sale and delivery of water service to residents within their respective service areas of the Truckee Meadows Community; and

WHEREAS, at the recommendation of the Western Regional Water Commission, the respective governing boards of TMWA and Washoe County have requested that studies be conducted to determine whether merger of Washoe County's Department of Water Resources (DWR) Water Utility into TMWA could advance the establishment of an integrated water resources management system and have significant benefits for the community, including but not limited to long term savings, more efficient resource use, better stewardship of water resources, more efficient use of facilities and facility planning, expanding the benefits of drought storage to all Truckee Meadows customers, and more predictable and efficient customer services benefits for the Truckee Meadows Community; and

WHEREAS, after due consideration of all appropriate factors, the Washoe County Board of County Commissioners and the TMWA Board of Directors have determined a cooperative agreement governing merger of the DWR Water Utility into TMWA is in the best interests of the their respective customers and the Truckee Meadows Community; and

WHEREAS, NRS 277.045 provides that two or more political subdivisions may enter into cooperative agreements for the performance of any governmental function; and

WHEREAS, NRS 277.045 further provides that every such cooperative agreement must be adopted by formal resolution or ordinance of the governing body of each political subdivision included, and must be attached hereto as an exhibit; and

TRUCKEE MEADOWS WATER AUTHORITY
RESOLUTION NO. 151 (continued)

WHEREAS, the Washoe County Board of County Commissioners desires to approve and execute the Interlocal Agreement governing merger of the DWR Water utility into TMWA; and

NOW, THEREFORE, BE IT RESOLVED by TMWA, that:

SECTION 1. A true and correct copy of the Interlocal Agreement governing merger of the DWR Water utility into TMWA is attached in full hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Interlocal Agreement is hereby approved, and TMWA staff are authorized and directed to perform any term, condition, duty or obligation necessary to effectuate the Interlocal Agreement.

SECTION 3. All actions previously taken by TMWA and its officers and employees to carry out the purposes of this Interlocal Agreement and Resolution are hereby approved and ratified.

SECTION 4. This Resolution shall be effective upon passage and adoption.

Upon motion by Board member Robert Larkin, seconded by Board member Geno Martini, the foregoing Resolution was passed and adopted this 9th day of December, 2009, by the following vote:

AYES: Dave Aiazzi, Mike Carrigan, Mike Cate, Robert Larkin, Geno Martini and Tom Young

NAYS: None

ABSENT: Robert Cashell

ABSTAIN: None

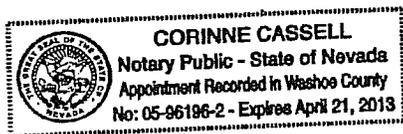

Mike Carrigan, Chairman
Truckee Meadows Water Authority

07-15-10

TRUCKEE MEADOWS WATER AUTHORITY
RESOLUTION NO. 151 (continued)

STATE OF NEVADA,)
 : ss.
COUNTY OF WASHOE.)

On this 16th day of December, 2009, Mike Carrigan, Chairman of the Board of Truckee Meadows Water Authority, personally appeared before me, a Notary Public in and for said County and State, and acknowledged that he executed the above instrument freely and voluntarily and for the purposes therein mentioned.



Corinne Cassell

Notary Public

09-1314

**INTERLOCAL AGREEMENT
GOVERNING THE MERGER OF THE WASHOE COUNTY DEPARTMENT OF
WATER RESOURCES WATER UTILITY INTO THE TRUCKEE MEADOWS
WATER AUTHORITY**

DATED

1.29.2010

07-1314

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09-1516

**INTERLOCAL AGREEMENT
GOVERNING THE MERGER OF THE WASHOE COUNTY DEPARTMENT OF
WATER RESOURCES WATER UTILITY
INTO THE TRUCKEE MEADOWS WATER AUTHORITY**

This Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority, is between WASHOE COUNTY, NEVADA, a political subdivision of the State of Nevada ("County" or "Washoe County"), and TRUCKEE MEADOWS WATER AUTHORITY ("TMWA"), a Joint Powers Authority entity created pursuant to a cooperative agreement among the cities of Reno, Nevada, Sparks, Nevada and Washoe County, Nevada, pursuant to N.R.S. Chapter 277, each a "Party" and collectively "Parties."

RECITALS

A. Pursuant to direction by their respective governing boards, and in furtherance of directives in the Western Regional Water Commission Act, TMWA and Washoe County Department of Water Resources ("DWR") have undertaken studies to determine whether some form of consolidation of their water services functions would be feasible and if so, whether such consolidation would create net benefits for the Truckee Meadows community;

B. These studies demonstrated that merging the DWR Water Utility into TMWA by defeasing and or restructuring DWR debt would be financially feasible within a reasonable time-frame, but that the converse (defeasing TMWA's debt) would not be a financially desirable alternative;

C. The Western Regional Water Commission has reviewed the results of studies presented by staffs of TMWA and DWR at its meeting held August 14, 2009, and agreed to recommend to the governing boards of TMWA and DWR that merger of the DWR Water Utility into TMWA be pursued;

D. TMWA and DWR have determined that merger of the DWR Water Utility into TMWA can have significant benefits for the community to advance the establishment of an integrated water resources management system, including but not limited to long term savings, more efficient resource use, better stewardship of water resources, more efficient use of facilities and facility planning, expanding the benefits of drought storage to all Truckee Meadows customers, and more predictable and efficient customer services;

E. TMWA and DWR have determined that if appropriately implemented, merger of the DWR Water Utility into TMWA can be achieved within the framework of the rate structures previously planned by the separate agencies and presented to the respective

governing boards, and that merger will have little near-term rate consequences and will have long-term rate benefits for the customers of both entities;

F. After considering all appropriate factors, the Washoe County Board of County Commissioners ("County Board") and the TMWA Board of Directors have determined that merging the DWR Water Utility into TMWA, subject to the terms and conditions of this Agreement, is in the best interests of their respective customers and the community:

NOW THEREFORE, in consideration of the premises and covenants and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

Addendum shall have the meaning set forth in Section 5.2

Assumed Liabilities shall have the meaning set forth in Section 5.6

Closing Date shall mean the date no later than one year following the date upon which all material transactions, documents, obligations, and Necessary Conditions have been completed, assumed or fully satisfied and made effective, including, without limitation, obtaining all consents, authorizations, permits, licenses, certificates and approvals required under this Agreement, and the Water Utility and Transferred Assets are conveyed and transferred to TMWA, as specifically determined in the Closing Memorandum.

Closing Memorandum shall mean an agreement prepared by the Parties at such time as the Necessary Conditions set forth in Article III will be achieved within a predictable period, setting forth the remaining actions and forms of documents necessary to effect the full legal merger of the Water Utility into TMWA, as more fully defined in Section 7.12.

DWR Water Utility (or Water Utility) shall mean the elements of the Washoe County Department of Water Resources that provide for the delivery of potable water to retail and wholesale services in the Washoe County Service Area

Effective Date shall mean the date this Agreement is approved by the Attorney General of the State of Nevada.

Environmental Claims means any and all administrative, regulatory or judicial actions, suits, demand, demand letters, claims, liens, proceedings or notices of non-compliance or violation by any person or entity (including any governmental authority) alleging potential liability, including liability for enforcement, indemnification, cost

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recovery, cleanup costs, injunctive relief, removal costs, natural resource damages, property damages, personal injury, or penalties, arising out of, based upon, or resulting from a) the presence, or Release or threatened Release into the environment, of any Hazardous Materials relating to ownership or operation of the Transferred Assets; or b) of any violation of any Environmental Law related to the ownership or operation of the Transferred Assets; or c) any and all claims by any third party resulting from the presence or Release of any Hazardous Materials related to the Transferred Assets.

Environmental Laws shall mean any currently applicable federal, state, or local laws, statutes, regulations, codes, or ordinances relating to, or imposing standards regarding, pollutants or the protection of human health or the environment, including, without limitation, laws and regulations relating to Release or threatened Releases of Hazardous Materials, or otherwise relating to the treatment, storage, or disposal of Hazardous Materials.

Excluded Assets shall have the meaning set forth in Section 5.4

Excluded Liabilities shall have the meaning set forth in Section 5.7

Excluded Water Utility Water Resources shall mean the water rights other than Water Utility Water Resources which are owned by Washoe County and are assets of the County for use by Departments other than the Department of Water Resources.

Financial Obligations shall mean the Washoe County Obligations and the TMWA Obligations

Hazardous Materials means any hazardous or toxic substance, material, or waste defined, listed, or classified as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous material," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants" or "pollutants" or words of similar meaning and regulatory effect by any Environmental Laws.

Material Condition shall mean condition(s) the occurrence or existence of which would be a significant impediment to successful legal or financial Merger or that would impact the future financial integrity of TMWA post-Merger.

Merger shall mean the full legal integration of the Water Utility into TMWA through the transfer of assets and assumption of liabilities as provided herein, such that TMWA is the surviving water purveyor, as further described in Section 2.4.

Necessary Conditions shall have the meaning set forth in Section 3.1

Operating Agreement shall have the meaning set forth in Section 7.5

Real Property shall mean all existing right, title, privileges, and interest to real property held in fee simple, or as easements, licenses, prescriptive rights, right-of-ways,

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and rights to use public and private roads, highways, streets owned or used by Washoe County in connection with the construction, installation, expansion or necessary to operate and maintain all Transferred Assets or the Water Utility.

Release shall be defined as that term is defined in 42 USC § 9601(22).

Truckee Meadows Water Authority ("TMWA") shall mean the separate legal entity established by the TMWA JPA pursuant to Chapter 277 of the Nevada Revised Statutes.

TMWA Obligations has the meaning specified in Section 4.1.2 hereof. A list of presently outstanding TMWA Obligations, including a payment schedule therefor, as of June 30, 2009, is presented in TMWA's 2009 Comprehensive Annual Financial Report.

TMWA Joint Powers Agreement (or TMWA JPA) shall mean the "Truckee Meadows Water Authority Cooperative Agreement among the City of Reno, City of Sparks, County of Washoe" effective December 4, 2000, as amended in 2005, and together with any subsequent amendment thereto, pursuant to which the parties to that agreement formed TMWA as a Joint Powers Authority under chapter 277 of the Nevada Revised Statutes.

Transferred Assets shall have the meaning set forth in Section 5.3.

Water Utility Water Resources shall mean the water rights set forth on Schedule 5.3(c) which represent all of Washoe County's: 1) owned and dedicated water rights which are committed to support existing and future potable/domestic water service(s) to municipal and industrial customers within Washoe County's service area; and 2) banked water rights held in trust for third parties.

Washoe County Borrowing Documents has the meaning set forth in Section 4.1.1 hereof.

Washoe County Obligations has the meaning specified in Section 4.1.1 hereof. A list of presently outstanding Washoe County Obligations and a payment schedule therefor, as of June 30, 2009, is presented in Washoe County's 2009 Comprehensive Annual Financial Report.

Washoe County Intrafund Loans shall mean outstanding loans made among the water, sewer, reclaimed water and stormwater divisions of the DWR Enterprise Fund.

Water Utility Water Facilities shall mean all water treatment plants, wells, supply, storage, transmission and distribution pipes and facilities, pumps, tanks, trade fixtures, leasehold improvements, generators, valves, meters, service connections and all other physical facilities, improvements and installations primarily used in conjunction with, or necessary to operate the Water Utility, together with any assignment of existing and assignable third-party warranties and representations that relate to completed or

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ongoing construction, reconstruction, upgrading, installation, expansion and repair of the Water Utility.

Water Utility Water Revenues (or Water Revenues) shall mean all income and revenues received or accrued under generally accepted accounting principles derived directly or indirectly by Washoe County from the sale of water or from other services provided by, or from the operation and use of and otherwise pertaining to the Water Utility, including without limitation, all rates, fees, and other charges or payments for the use of the Water Utility, but excluding any moneys borrowed and used for the acquisition of capital improvements. Water Revenues will also include all income or other realized gains from the investment of such income and any sums withdrawn from a rate stabilization account.

ARTICLE II. AUTHORITY, PURPOSE AND INTENT, COVENANT TO COOPERATE

2.1 **Authority.** Chapter 277 of the Nevada Revised Statutes provides general and specific authority for the actions contemplated herein, including but not limited to the following: NRS 277.060 allows governmental entities authorized to acquire, operate, and maintain water facilities to contract with one another to perform such services. NRS 277.045 allows political subdivisions of the State to enter into cooperative agreements for the performance of governmental functions. NRS 277.103 provides for the merger of governmental services. 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.

2.2 **Purpose and Intent.** The purpose of this Agreement is to integrate and merge in a strategically phased manner the Water Utility into TMWA, with the surviving water purveyor to be TMWA, which merger will be fully effective upon satisfaction of the material conditions stated herein and in the Closing Memorandum, with the ultimate goal of achieving the benefits of improved customer service, water resources management, system reliability, and cost reductions and future cost avoidance through merger. The Parties agree that a further goal of this Agreement is to permit the County to permanently withdraw from the business of being a potable water purveyor such that the County will not be required in the future to re-establish a water utility to provide service to customers of any failed systems. The Parties acknowledge and agree that TMWA will assess the impacts to each Party's customer groups of all assumed liabilities and if required will create differential rates by using surcharges, for example, to ensure that assumed liabilities that benefit one group of rate payers more than another are appropriately allocated to those rate payers using principles of fairness and cost of service rate-making.

2.3 **Condition of Assets.** The Parties acknowledge and agree that the Transferred Assets will be transferred at full merger by Washoe County for no financial consideration and that such assets will be transferred "as-is, where is," with the exception of any Excluded Liabilities, as defined herein. Consequently, TMWA acknowledges and

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agrees that Washoe County makes no representation or warranty, express or implied, with respect to the Transferred Assets except as expressly set forth in this Agreement, the Addendum, or the Closing Memorandum.

2.4 Merger of Systems. Effective upon the Closing Date, Washoe County shall transfer the Transferred Assets to TMWA pursuant to the procedures set forth in the Closing Memorandum, and TWMA shall from that time forward assume full responsibility for the Water Utility functions, including all Assumed Liabilities, and shall have full authority to do all things necessary to conduct such operations, limited only by the conditions set forth in the TMWA JPA. Effective on the Closing Date, the DWR Water Utility will be fully merged into TMWA, all water customers of DWR shall become TMWA customers, TMWA shall have the right to all Water Revenues from such customers, and the retail service area of DWR shall be combined into TMWA's service area. Effective upon the Closing Date, all legally delegable governmental functions previously performed by the Washoe County Board in connection with the Water Utility or by the Water Utility shall be delegated to TMWA, by operation of this Agreement. Notwithstanding the foregoing, in the event a function cannot be delegated to TMWA without modification of existing laws or ordinances, TWMA and Washoe County agree to cooperate in effecting modifications of applicable laws or ordinances to allow delegation of such function to TMWA, and pending such modification, Washoe County shall remain responsible for the performance of such functions.

2.5 Covenant to Satisfy Conditions. The Parties agree to use best efforts to do all things necessary, proper and advisable under applicable laws, regulations, and pre-existing covenants and contracts, to consummate and make effective the agreements, covenants and transactions contemplated by this Agreement, including without limitation the Addendum, any Operating Agreement, and the Closing Memorandum. In connection therewith, the Parties agree that, during the due diligence process leading up to full merger, the Parties, as applicable, shall provide full disclosure regarding the Transferred Assets, the terms and conditions of contracts, agreements and contingent obligations, existing and future commitments, and liabilities of both Parties for the purpose of appropriately allocating risks to the Parties during the various phases of the merger process, as further set forth in Article V and VI.

ARTICLE III. CONDITIONS NECESSARY FOR CONSUMMATION OF MERGER

3.1 Necessary Conditions. The respective obligations of each party to effect full legal and financial Merger shall be subject to the satisfaction of the following conditions on or prior to the Closing Date, except, to the extent permitted by pre-existing covenants, contracts and obligations of the parties, that such conditions may be waived or extended in writing in accordance with Section 10.5 of this Agreement. The Parties acknowledge that certain conditions and legal restrictions prevent the Merger contemplated by this Agreement as of the Effective Date of this Agreement, and that the Parties will need to cooperate and use best efforts to create the legal and financial

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environment necessary for Merger. Necessary conditions for the Merger (the "Necessary Conditions") are:

3.1.1 Modification of the TMWA JPA. Modification of the TMWA JPA to include at a minimum, amendment of governance structure to provide appropriate additional representation of Washoe County on the TMWA Board of Directors. The Parties acknowledge that amendment of the TMWA JPA can only be accomplished by the consent of Reno, Sparks, and Washoe County, with the approval of the Attorney General of Nevada. The Parties agree to cooperate to encourage the parties to the TMWA JPA to adopt appropriate amendments to facilitate the implementation of this Agreement.

3.1.2 Defeatance of, or removal of legal restrictions contained in, outstanding TMWA and DWR Obligations:

- A. Conditions relating to TMWA Obligations: Each of TMWA Borrowing Documents related to a TMWA Obligation which has not been retired or defeased as of the Closing Date either (i) has been amended in a manner such that the consummation of the Merger on the terms contemplated by this Agreement will not violate Section 3.1.3 hereof, or (ii) allows the Merger on the terms contemplated by this Agreement to occur without violating Section 3.1.3 hereof.
- B. Conditions relating to Washoe County Obligations: Each of Washoe County Borrowing Documents related to a Washoe County Obligation which has not been retired or defeased as of the Closing Date either (i) has been amended in a manner such that the consummation of the Merger on the terms contemplated by this Agreement will not violate Section 3.1.3 hereof, or (ii) allows the Merger on the terms contemplated by this Agreement to occur without violating Section 3.1.3 hereof.

3.1.3 Non-contravention of Bond Covenants. The consummation of the Merger on the Closing Date will not:

- (a) result in a violation of any of the covenants made in the TMWA Borrowing Documents pertaining to any then outstanding TMWA Obligations;
- (b) result in a breach of any provision of, or constitute a default (or an event that would with notice or lapse of time, or both, constitute a default) under, the TMWA Borrowing Documents pertaining to any then outstanding TMWA Obligations;
- (c) result in a violation of any of the covenants made in the Washoe Borrowing Documents pertaining to any then outstanding Washoe Obligations; or

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(d) result in a breach of any provision of, or constitute a default (or an event that would with notice or lapse of time, or both, constitute a default) under, the Washoe County Borrowing Documents pertaining to any then outstanding Washoe County Obligations.

3.1.4 Protection of Access to Capital. Conditions are achieved that protect TMWA's access to future capital requirements in a cost effective manner.

3.1.5 Satisfaction of Washoe County Intrafund Loans. All Washoe County Intrafund Loans have been retired, or have been legally assumed by (or legally replaced by obligations of) TMWA on terms satisfactory to the County and TMWA.

3.1.6 Other Obligations. No amounts are due from the DWR Enterprise Fund to the Washoe County General Fund or other non-Water Utility funds of the County.

ARTICLE IV. FINANCIAL POLICIES

4.1 Non-Contravention of Covenants for Bonds and other Contractual Obligations for Borrowed Money.

4.1.1 Washoe County Financial Obligations. Washoe County has issued bonds ("Washoe County Bonds") and other instruments to repay borrowed money ("Other Washoe Borrowing") which are secured, in whole or in part, by the revenues of Washoe County's water and sewer utility systems, including the DWR Water System (collectively, Washoe Bonds and Other Washoe Borrowing are "Washoe County Obligations"). Washoe County has made covenants to the owners of the Washoe County Obligations in the ordinances authorizing the Washoe Bonds, in the Washoe Bonds themselves, and in other written agreements pertaining to the Washoe County Obligations (collectively, "Washoe Borrowing Documents"). During the term of the Washoe County Obligations, Washoe County and TMWA hereby covenant and agree that this Agreement will not be applied or interpreted in a manner that causes a violation of any of the covenants made in the Washoe County Borrowing Documents or that would result in a breach of any provision of, or constitute a default (or an event that would with notice or lapse of time, or both, constitute a default) under, the Washoe County Borrowing Documents. The provisions of the Washoe County Borrowing Documents shall apply rather than the provisions of this Agreement in any situation in which application of the provisions of this Agreement would violate any of the covenants made in the Washoe County Borrowing Documents or would result in a breach of any provision of, or constitute a default (or an event that would with notice or lapse of time, or both, constitute a default) under the Washoe County Borrowing Documents. The provisions of this subsection 4.1.1. shall remain in force until such time as the outstanding Washoe Obligations are defeased, restructured, amended, or fully paid and retired in accordance with their

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terms and all covenants of the Washoe County Borrowing Documents are fully satisfied.

4.1.2 TMWA Financial Obligations. TMWA has issued bonds ("TMWA Bonds") and other instruments to repay borrowed money ("Other TMWA Borrowing") which are secured, in whole or in part, by the revenues of TMWA's water system (collectively, TMWA Bonds and Other TMWA Borrowing are "TMWA Obligations"). TMWA has made covenants to the owners of the TMWA Obligations in the resolutions authorizing the TMWA Bonds, in the TMWA Bonds themselves, and in other written agreements pertaining to the TMWA Obligations (collectively, "TMWA Borrowing Documents"). During the term of the TMWA Obligations, Washoe County and TMWA hereby covenant and agree that this Agreement will not be applied or interpreted in a manner that causes a violation of any of the covenants made in the TMWA Borrowing Documents or that would result in a breach of any provision of, or constitute a default (or an event that would with notice or lapse of time, or both, constitute a default) under the TMWA Borrowing Documents. The provisions of the TMWA Borrowing Documents shall apply rather than the provisions of this Agreement in any situation in which application of the provisions of this Agreement would violate any of the covenants made in the TMWA Borrowing Documents or would result in a breach of any provision of, or constitute a default (or an event that would with notice or lapse of time, or both, constitute a default) under, the TMWA Borrowing Documents. The provisions of this subsection 4.1.2. shall remain in force until such time as the outstanding TMWA Obligations are defeased or fully paid and retired in accordance with their terms and all covenants of the TMWA Borrowing Documents are fully satisfied.

4.1.3 TMWA and Washoe Obligations. The County and TMWA shall make commercially reasonable efforts to defease, retire, or amend all Washoe Obligations and TMWA Obligations as provided in Section 3.1.2 hereof so the conditions set forth in Section 3.1.3 can be met. In furtherance of this provision of this Section:

- A. The County and TMWA shall endeavor to defease or retire the \$65 million County Water and Sewer Bond issued December 21, 2005, subject to market conditions. The parties agree that they shall use commercially reasonable efforts to do so by a mutually agreeable date and at a mutually agreeable cost. It is recognized that such defeasance or retirement of the County Bonds described in this section may be achieved in whole or in part by the issuance of bonds by the County, TMWA or both on or before the Closing date.
- B. In the case of the \$4,600,000 County Storm Sewer Bond issued on November 1, 2006, the County and TMWA will attempt to negotiate with the owner of that Bond to amend the Bond so it

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does not encumber, and is not secured, in whole or in part, by the revenues of the County's water system. If this effort is not successful, the parties shall endeavor to defease or retire the Bond subject to market conditions. The parties agree that they shall use commercially reasonable efforts to do so by a mutually agreeable date and at a mutually agreeable cost. It is recognized that such defeasance or retirement of the County Bond described in this section may be achieved in whole or in part by the issuance of bonds by the County, TMWA or both on or before the Closing date.

- C. In the case of County Obligations held by the State Treasurer, or any other agency of the State of Nevada, the County shall endeavor to amend the County Borrowing Documents evidencing those obligations (i) to separate them into "water" obligations, to which DWR's Water Revenues are pledged and "other obligations", to which DWR's Water Revenues are not pledged, and (ii) to allow the assignment and assumption of the water obligations by Washoe to TMWA, or the defeasance and retirement of those water obligations, whichever the parties agree is the most advantageous approach, it being recognized that different approaches may be used for different County Obligations. If it is determined to defease or retire all or some of those Obligations, such defeasance or retirement may be achieved in whole or in part by the issuance of bonds by TMWA on or about the Closing date.
- D. To the extent of any other applicable debt or debt holder consent or amendment rights, County and TMWA shall endeavor to satisfy same.

4.1.4 County Intrafund Loans. The County will develop a plan to meet the condition in 3.1.5, with a goal that that condition will be fully satisfied by a mutually agreeable date.

4.1.5 County Medium Term Bonds. The County and TMWA will, by a mutually agreeable date, develop a plan to retire or defease the County's Series December 1, 2001 Medium Term Bonds that are presently being repaid with Water Revenues, or a plan for TMWA to assume responsibility for paying to the County monies in a sufficient amount to timely pay those Medium Term Bonds with a goal that that those Bonds will be retired or defeased, or a satisfactory agreement made by the parties hereto for TMWA to provide the County with funds sufficient to pay the interest on and retire those obligations on their stated due dates between the date hereof and the final maturity date of November 1, 2011.

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4.1.6 Bond Bank. Washoe County will establish the “Washoe County Bond Bank” to facilitate issuance of future debt and the Parties shall cooperate to encourage the amendment of Nevada law to allow for the refunding, or defeasance, or both of debt obligations through the bond bank that were not originally issued through the bond bank.

4.1.7. Appropriate Allocation of DWR Revenues. Washoe County will ensure that revenues are appropriately allocated among sewer, water, reclaim and remediation services to ensure Water Revenues are used solely to support the cost of water service.

4.1.8 New Debt and Joint Financial Planning. The Parties agree that their respective financial managers will consult with each other prior to incurring additional debt and will cooperate in financial planning.

4.1.9 Maintenance of Facilities. Subject to the allocation of responsibilities to be set forth in the Operating Agreement, the Parties covenant to maintain their respective water systems in good repair to effectively plan, operate and maintain the water system and provide dependable, reliable service to customers on a consistent basis in conformance with industry standards and practices.

ARTICLE V. DUE DILIGENCE, TRANSFERRED ASSETS AND ASSUMED LIABILITIES

5.1 Due Diligence Process. As soon as reasonably practicable after the Effective Date of this Agreement, the Parties shall create and implement a due diligence process under the direction of TMWA’s General Manager or individuals designated by him and the Director of DWR or individuals designated by her. The purpose of the due diligence process is 1) to identify, disclose and describe all Transferred Assets and Assumed Liabilities; and 2) to identify and disclose obligations of the Water Utility and Material Conditions affecting the Water Utility operations, its financial condition, and the Transferred Assets as required for the identification and determination of Assumed and Excluded Liabilities, as further described in Article VI below.

5.2 Preparation of Addendum. As an outcome of the due diligence process, the Parties will prepare an addendum to this Agreement (the “Addendum”), which shall set forth Schedules identifying the Transferred Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities, as generally described below, and Schedules identifying and disclosing the conditions set forth in Article VI. The Addendum shall include a plan for the mitigation or cure of certain conditions identified by the Parties, and a proposal for the allocation of liabilities between the Parties, based upon the general principles set forth in Article IX below. The Addendum is intended to be presented to the governing boards of the Parties for review and approval no later than May 31, 2010, or within a reasonable time period thereafter as determined by the TMWA General Manager and Director of DWR. Should either Party fail to approve the Addendum within two months of

presentation by the TMWA General Manager and Director of Water Resources, this Agreement may be terminated pursuant to the procedures set forth in Article X. All Schedules set forth in the Addendum shall be reviewed and updated to reflect any changes in or additions to Material Conditions at the time either Party becomes aware of such conditions. Such Schedules shall be amended with any appropriate additions and deletions as schedules to the Closing Memorandum.

5.3 Transferred Assets. Upon the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, on the Closing Date Washoe County shall assign, transfer, convey and deliver to TMWA and TMWA shall acquire and accept from Washoe County, all of Washoe County's rights, title and interest in and to the Transferred Assets. The Transferred Assets are defined as and shall consist of the following, all as more particularly described in the Schedules of Transferred Assets to be set forth in the Addendum and the Closing Memorandum, and excluding the Excluded Assets:

- a. All Water Utility Water Facilities;
- b. All Real Property;
- c. All Water Utility Water Resources;
- d. All hookup fees, connection charges, water resource fees, facility charges, performance bonds or other amounts paid by or received from developers in connection with any development agreement which have not been expended, or which are due or to become due from developers or customers for future service, water resources, or distribution facilities;
- e. All customer and billing information and records of whatever form;
- f. Water Revenues, pertinent restricted and unrestricted cash balances, accounts receivable, deferred assets, prepaid obligations, customer deposits as allocated by the Parties;
- g. All books, records, plans, plats, engineering and other drawings, designs, blueprints, plans, specifications, maintenance and operating manuals, engineering reports, calculations, computer models and studies, accounting, budget and business records relating to the Water Utility or the Transferred Assets, whether in written form or otherwise, controlled by or in the possession of Washoe County that relates to the Water Utility;
- h. Electronic data, computer models and /or databases used to create geographic information, data and maps, distribution system design drawings, and as-built drawings with respect to the Transferred Assets;
- i. Equipment, vehicles, rolling stock, tools, parts and other personal property owned, leased or primarily used by DWR necessary to operate the Water Utility; and
- j. All necessary regulatory authorizations, governmental requirements, permits or approvals, subject to all conditions, limitations or restrictions contained therein, necessary to construct, expand, repair, update, operate or maintain the Water Utility or to provide water utility service.

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5.4 Excluded Assets. Washoe County and TWMA agree that TMWA is not acquiring the Excluded Assets. Excluded Assets shall consist of those assets of the Washoe County DWR that are not owned, leased, or primarily used in conjunction with, or necessary to operate or necessary to meet the commitments of the Water Utility, not included in the Schedules of Transferred Assets, except for unintentional omissions as mutually agreed by the Parties.

5.5 Assumed Contracts. During the due diligence process, the Parties shall cooperate to identify the contracts that TMWA will assume in order to operate the Water Utility, which shall be set forth in a schedule to the Addendum and the Closing Memorandum (Schedule 5.5), consisting of:

- a. Construction contracts;
- b. Contracts with a term of 1 year or greater;
- c. Contracts for professional services;
- d. Insurance agreements to the extent assignable and assumable;
- e. Developer agreements for infrastructure and developer agreements for water resources;
- f. Any other contracts or agreements necessary for TMWA to operate the Water Utility.

5.6 Assumed Liabilities. Upon the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, at the Closing and from and after the Closing Date, TMWA shall assume, perform, fulfill and discharge when due all Assumed Liabilities. Assumed Liabilities shall mean the following, excluding the Excluded Liabilities:

- a. All obligations in the normal course of the Water Utility business to provide water service to those customers receiving water service on the Closing Date, subject to the terms and conditions of TMWA Rules of Service;
- b. All resource commitments, to be identified in Schedule 5.6, subject to compliance by beneficiaries thereof with TMWA Rules of Service or the terms of any applicable Assumed Contracts;
- c. All liabilities and obligations under the Assumed Contracts to the extent such Assumed Contracts are assigned and assumed;
- d. All liabilities in respect of County employees that TMWA hires and which are part of or consistent with agreements reached by the Parties as part of the Operating Agreement or Closing Memorandum;
- e. All liabilities for obligations in respect of which TMWA has indemnified Washoe County pursuant to Article IX of this Agreement;
- f. Such other liabilities as TMWA agrees to assume pursuant to the due diligence process, as further described in Article VI and to be specifically set forth in a schedule to the Closing Memorandum;

all as more particularly described in the Schedules of Assumed Liabilities to be set forth in the Addendum and Closing Memorandum.

5.7 Excluded Liabilities. Washoe County and TMWA agree that TMWA is not assuming any of the Excluded Liabilities. Excluded Liabilities shall mean:

- a. All liabilities relating to or involving Washoe County employees that TMWA hires and that TMWA does not assume;
- b. All liabilities for obligations in respect of which Washoe County has indemnified TMWA pursuant to Article IX of this Agreement; and
- c. Such other liabilities as the Parties agree are Excluded Liabilities pursuant to the due diligence process, as further described in Article VI and to be specifically set forth in a schedule to the Addendum and Closing Memorandum.

ARTICLE VI. DISCLOSURES

6.1 Washoe County Disclosures. Washoe County agrees to cooperate in the due diligence process and to allow TMWA to examine all Transferred Assets, and all other documents and information relevant to the Merger, including but not limited to contracts and agreements, permits, licenses, books, records not limited to customer and employee records, in order to allow the Parties to undertake a comprehensive evaluation of the physical and financial condition of the Water Utility and the Transferred Assets, for the purpose of determining appropriate allocation of risk and liabilities between the Parties, and to ensure compliance with the Necessary Conditions at Closing. Pursuant to the due diligence process described in Section 5.1, Washoe County shall disclose all information relating to the Transferred Assets or the Water Utility, other than Financial Obligations that will be released prior to Closing, as follows, to be set forth by the Parties in schedules to the Addendum and Closing Memorandum:

- a. Real Property. Schedule 6.1(a): With regard to Real Property, any liens, mortgages, or other encumbrances, zoning or land-use conditions or violations, known or threatened violations or breaches of lease conditions, that may materially impair TMWA's ability to operate and maintain the Water Utility.
- b. Water Utility Water Resources. Schedule 6.1(b): With respect to Water Utility Water Resources, any defects in title, liens, pledges, deeds of trust, or other encumbrances that may materially impair TMWA's ability to utilize Water Utility Water Resources to meet the Water Utility water service commitments.
- c. Utility Water Facilities. Schedule 6.1(c): With respect to Water Utility Facilities, any conditions or constraints that may materially affect their functionality including without limitation, operations, safety, or useful life.
- d. Other Transferred Assets. Schedule 6.1(d): With respect to other Transferred Assets, any liens, mortgages, pledges, security interests, rights of

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third parties, encumbrances or other charges of any kind affecting such Transferred Assets that may materially impair TMWA's ability to operate and maintain the Water Utility.

e. Assumed Contracts. Schedule 6.1(e): With respect to Assumed Contracts, any contingent, known, or threatened default, breach, or claim by any Party, any commitments by Washoe County for terms of one year or longer, any commitments by Washoe County that are likely to involve or are reasonably likely to involve an individual payment of more than \$100,000, any obligations for borrowed money or to maintain deposits or advances of any kind; any capital lease obligations, any contracts which may constitute joint venture or partnership obligations, and any other Material Condition affecting or relating to the Assumed Contracts.

f. Regulatory Compliance: Schedule 6.1(f): Any known or threatened violations of any laws, regulations, permits, and licenses controlling or affecting the Water Utility, including but not limited to health, safety, Environmental Laws, employee and labor matters, and financial reporting.

g. Environmental Claims: Schedule 6.1(g): Except as disclosed in Schedule 6.1(f), all Environmental Claims, whether known, contingent, or threatened.

h. Threatened or Pending Litigation and Administrative Proceedings: Schedule 6.1(h). Any threatened or pending litigation or administrative proceeding that affects or relates to the Water Utility or the Transferred Assets or the Washoe County employees employed by the Water Utility.

i. Other Claims, Liabilities, including Contingent Liabilities: Schedule 6.1(i). Any claims, known or contingent liabilities, or other Material Conditions not disclosed in the above schedules.

6.2 Continuing Duty to Disclose through the Closing Date. Washoe County shall have a continuing duty to disclose to TMWA any Material Conditions of which it becomes aware that may affect the Transferred Assets, the Merger, the obligations and disclosures set forth above, or that could materially affect the actions contemplated by this Agreement.

6.3 Confidential Treatment. TMWA shall treat as confidential any information disclosed by Washoe County that is designated as confidential, except to the extent such information is a public record or a matter of public knowledge.

6.4 Removal and Cure of Material Conditions.

6.4.1 Priority Material Conditions. The Parties shall negotiate a list of priorities for conditions set forth in the Schedules described in Section 6.1 that

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must be removed, cured, corrected, or mitigated as a condition of Closing, which shall be set forth in Schedule 6.4 to the Addendum ("Priority Material Conditions"). In the event any Priority Material Conditions have not been so cured prior to the Closing Date, TMWA may waive such cure or may choose to delay Closing pending appropriate resolution of such Priority Material Conditions, or may terminate this Agreement subject to the provisions of Article X.

6.4.1 Other Conditions. In addition, following the Effective Date and until the Closing Date, Washoe County shall have a continuing obligation to make reasonable efforts to remove, cure, correct, or mitigate all conditions set forth in Schedules described in Section 6.1, on a best efforts basis.

6.5 Allocation of Liabilities at Closing. As of the Closing Date, any remaining liabilities associated with the Material Conditions disclosed pursuant to this Article VI other than Priority Material Conditions, shall be designated as Assumed Liabilities or as Excluded Liabilities in the Closing Memorandum pursuant to the general principles of risk allocation and indemnification set forth in Article IX.

6.6 Effect of Operating Agreement. In the event the Parties determine to implement Merger through the Phased Plan and enter into an Operating Agreement, the Parties shall review the Material Conditions and TMWA may agree to assume responsibility for certain Material Conditions under provisions set forth in such Operating Agreement.

6.7 TMWA Disclosures. TMWA agrees to cooperate in the due diligence process and to allow DWR to examine documents and information relevant to any Material Conditions that relate to TMWA's operations, assets or liabilities. TMWA shall fully disclose to DWR any and all TMWA Disclosures if such information would be required to be disclosed to its external auditors as part of TMWA's audit process. TMWA shall have a continuing duty to disclose to DWR any TMWA Disclosures of which it becomes aware, together with any Material Conditions that could materially affect the actions contemplated by this Agreement. DWR shall treat as confidential any information disclosed by TMWA that is designated as confidential, except to the extent such information is a public record or a matter of public knowledge.

ARTICLE VII. TRANSITION AND IMPLEMENTATION OF MERGER

7.1 Implementation Strategies. The Parties agree to undertake and complete an evaluation of defeasance and refinancing opportunities and strategies for the Financial Obligations. In the event this evaluation determines that meeting the Necessary Conditions will be feasible during calendar year 2010, or a reasonable period thereafter, such that a definite Closing Date can be determined, the Parties will consider whether to implement the Merger on an expedited basis, pursuant to an accelerated implementation plan ("Accelerated Plan"). Implementation of the Accelerated Plan will require the approval of both governing boards of the Parties. In the event the evaluation determines meeting the Necessary Conditions on an accelerated basis is not feasible or the Parties

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otherwise determine not to implement the Accelerated Plan, then the Parties will implement the Merger through a phased plan ("Phased Plan").

7.2 Transition Management. As soon as reasonably practicable after the Effective Date of this Agreement, the Parties shall create a transition management process under the direction of TMWA's General Manager or individuals designated by him and the Director of Washoe County DWR or individuals designated by her. The transition management process shall include planning for merger of Water Utility operations under both the Accelerated or Phased Plans, including engineering studies, facilities planning, and energy efficiency studies and planning for the addition of Water Utility employees to the TMWA staff as required for merged operations.

7.3 Employees. In order for TMWA to provide the services currently performed by the Water Utility, TMWA will require the skill and expertise of Washoe County employees now employed by the Water Utility. Accordingly, subject to applicable law and prudent management practices and workforce needs, TMWA contemplates hiring Washoe County employees currently performing functions within the scope of the proposed Merger. Workforce needs will be determined by cooperative effort of TMWA's General Manager and the Director of Washoe County DWR. In the event that Washoe County employees are hired by TMWA, opportunities for employment, and the classification and placement of those individuals within TMWA shall be determined on a fair and equitable basis, giving due consideration to these individuals' skills, work history, job experience, training, certification, licensing and professionalism. The Washoe County employees who are hired by TMWA will be hired subject to and employed under TMWA's terms and conditions of employment, including TMWA's employment policies and procedures and benefits programs. Moreover, it is anticipated that current Washoe County employees who are hired to job classifications that are covered by TMWA's collective bargaining agreement with the IBEW or hired to comparable positions, will be subject to TMWA's collective bargaining agreement with IBEW.

7.4 Interim Operations under the Accelerated Plan. In the event the Parties determine to implement Merger through the Accelerated Plan, TMWA and the Water Utility will maintain separate and distinct operations, generally under existing conditions, through the Closing Date and full Merger, and designated Washoe County employees will be hired by TMWA on the Closing Date.

7.5 Interim Operations under the Phased Plan. In the event the Parties determine to pursue Merger through the Phased Plan, the Parties will enter into an Operating Agreement pursuant to which TMWA will contract with County to assume responsibility for defined water services of the Water Utility (e.g. treatment, distribution, and maintenance) as determined under the transition management process. Under the Phased Plan, subject to Section 7.3, designated Washoe County employees will be hired by TMWA as of the effective date of the Operating Agreement. The Operating Agreement shall include the contractual provisions required for TMWA to perform such functions, including but not limited to specification of services required of TMWA, the

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budgeting process for TMWA's cost of services and County's payment obligations, conditions for the use or transfer of unencumbered assets necessary for performance of Water Utility functions, such as rolling stock and equipment, conditions governing the use of real property, access and security, maintenance of insurance, allocation of risk and liabilities, document management, and conditions of termination. Unless otherwise terminated or amended, the Operating Agreement shall remain in effect until the Closing Date and full Merger occurs. Based upon the transition management process for phased implementation, TMWA may contract with County to perform additional functions, including but not limited to billing and customer service, information technology, human resources, etc., which agreements may be set forth in the Operating Agreement or subsequent interlocal agreements. The Parties may also undertake joint management of certain functions, which agreements may be set forth in the Operating Agreement or subsequent interlocal agreements. In the event the Parties have determined to implement Merger through the Phased Plan but fail to execute the Operating Agreement, such failure will be a sufficient but not a mandatory basis for termination of this Agreement, as set forth in Article X.

7.6 Service Areas. Upon Merger, TMWA's service area will be defined as the combined, then-existing, retail service areas of TMWA and DWR, and service may be provided to new customers within TMWA boundaries set forth in the TMWA Joint Powers Agreement, and based upon the rules of the consolidated agency.

7.6.1 Interim Service Areas. Pending merger, the existing customers of each Party shall remain customers of such Party, unless otherwise determined by separate agreement. New customers shall be designated as TMWA or DWR customers based upon their proximity to existing TMWA or DWR facilities, availability of water resources, cost-effectiveness considering all customers of the two agencies, or as required to meet expectations of the bond-rating agencies, bond holders, and capital markets, and to avoid stranding infrastructure.

7.6.2 Verdi Agreements. The Parties agree to cooperate to encourage the parties to the Verdi settlement and water service agreements to enter into amendments that will allow TMWA to provide retail service to the Verdi Joint Service Area.

7.7 Rates, Fees, and Charges. Pending Merger, each Party shall maintain its separate rates, fees, and charges for its customers. Both Parties covenant to maintain their respective rates, fees, and charges at a level sufficient to assure compliance with the most restrictive covenants and requirements of the financial obligations of either Party. In the event the Parties enter into the Operating Agreement, Washoe County covenants to maintain rates, fees, and charges that produce revenues at least sufficient to meet of the cost of service and minimum requirements set forth in the Operating Agreement, but may not establish rates, fees, and charges that produce revenues less than the minimum revenue requirement.

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7.8 South Truckee Meadows General Improvement District Contract. The Parties will review the interlocal agreement between Washoe County and the South Truckee Meadows General Improvement District ("STMGID") to determine possible conditions for the assignment to TMWA of operations and maintenance responsibility of the STMGID system or explore other options satisfactory to Washoe County for the operations and maintenance of the system.

7.9 Outside Contracts, Purchasing. Pending Merger, in addition to any functions that may be transferred to TMWA pursuant to the Operating Agreement, TMWA and County agree to pursue additional efficiencies through such means as joint purchasing agreements, use of common vendors, etc., as identified during the due diligence process and thereafter.

7.10 Expenses. Subject to any allocation of obligations set forth in the Operating Agreement and Article IX of this Agreement, all costs, fees and expenses incurred in connection with this Agreement, and the transactions covered hereunder, shall be paid by the party incurring such costs, fees and expenses, except for those costs, fees and expenses incurred by joint agreement of the Parties, which costs, fees and expenses shall be allocated by mutual agreement of the Parties

7.11 Rules and Ordinances. The Parties acknowledge that regardless of the outcome of merger efforts, the community will be best served by consistency between the policies, rules, and charges of TMWA and the Water Utility. Accordingly, staffs of the two agencies will jointly recommend modifications to the rules, policies and charges, including specifically without limitation, water rights dedication policies, customer services, and facilities charges, of relevant sections of the Washoe County Development Code, Washoe County Ordinances and TMWA Rules to bring them into congruence and facilitate this Agreement. The Parties agree to cooperate to expedite consideration of proposed changes to the Development Code, Ordinances and Rules so that they become effective under the Phased Plan by the effective date of the Operating Agreement, or under the Accelerated Plan by the Closing Date.

7.12 Closing Memorandum.

At such time as the Parties determine that the Necessary Conditions set forth in Article III will be achieved within a predictable period, the Parties shall prepare and enter into a Closing Memorandum. The Closing Memorandum shall set forth the Closing Date and the remaining actions and forms of documents necessary to effect the Merger, including, but not limited to, the following:

7.12.1 Consents: all consents, authorizations, permits, licenses, certificates and approvals required under this Agreement;

7.12.2 Transfer Documents: all conveyances of real property and water rights with the same quality of title that Washoe County possesses, bills of sale,

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assumption and assignments and related documents necessary to transfer the Transferred Assets and Assumed Liabilities;

7.12.4 Financing Documents: all actions and forms of documents necessary to achieve the financial policies set forth in Article IV;

7.12.5 Necessary Conditions: all actions and forms of documents necessary to satisfy the Necessary Conditions set forth in Article III;

7.12.6 Schedules of Assets and Liabilities: definitive schedules of Transferred Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities;

7.12.7 Disclosure Schedules: definitive schedules identifying the matters set forth in Section 6.1 and 6.7, together with any remedial action required to be taken in connection therewith;

7.12.8 Other: such other actions and documents the Parties deem necessary in order to effect the Merger.

Should either Party fail to approve the Closing Memorandum within two months of presentation by the TMWA General Manager and Director of DWR, this Agreement may be terminated pursuant to the procedures set forth in Article X.

ARTICLE VIII: REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of Washoe County. The County makes the following representations and warranties to TMWA, as of the Effective Date and as of the Closing Date:

8.2.1 Good Standing; Proper Authority. The County is a political subdivision of the State of Nevada, duly organized, validly existing, and in good standing under the laws of the State of Nevada. The County has all organizational power necessary, and has taken, or will obtain prior to Closing, all necessary approvals required of the County Board under Nevada law to consummate the transactions contemplated hereunder.

8.2.2 No Violations; Enforceability; No Required Consents. The execution, delivery and performance by the County and DWR of this Agreement is not inconsistent with and will not violate or contravene any Law applicable to the County or DWR; does not and will not contravene any provision of, or constitute a default under any Contract to which the County or DWR is a party or by which they are bound. When executed and delivered, this Agreement and all other documents and instruments hereunder to which the County or DWR is a party shall constitute legal, valid, and binding obligations of the County or DWR,

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as applicable, enforceable against each of them, as applicable, in accordance with their respective terms. No consent, approval, authorization or other action by, or filing or registration with, any governmental authority is required in connection with the execution, delivery and performance by the County or DWR of this Agreement other than those that have been obtained and are in full force and effect.

8.2 Representations and Warranties of TMWA. TMWA makes the following representations and warranties to Washoe County, as of the Effective Date and as of the Closing Date:

8.2.1 Good Standing; Proper Authority. TMWA is a joint powers authority and political subdivision of the State of Nevada, duly organized, validly existing, and in good standing under the laws of the State of Nevada. TMWA has all organizational power necessary, and has taken, or will obtain prior to Closing, all necessary approvals required of its Board under Nevada law to consummate the transactions contemplated hereunder.

8.2.2 No Violations; Enforceability; No Required Consents. The execution, delivery and performance by TMWA of this Agreement is not inconsistent with and will not violate or contravene any Law applicable to TMWA; is not inconsistent with and will not violate or contravene the TMWA JPA; does not and will not contravene any provision of, or constitute a default under any Contract to which TMWA is a party or by which it is bound. When executed and delivered, this Agreement and all other documents and instruments hereunder to which TMWA is a party shall constitute legal, valid, and binding obligations of TMWA enforceable against TMWA in accordance with their respective terms. No consent, approval, authorization or other action by, or filing or registration with, any governmental authority is required in connection with the execution, delivery and performance by TMWA of this Agreement other than those that have been obtained and are in full force and effect.

ARTICLE IX. ALLOCATION OF LIABILITIES, INDEMNIFICATION, AND RISK MANAGEMENT

9.1 General Principles of Risk Allocation and Indemnity. The Parties agree and acknowledge that until completion of the due diligence process described in Article VI, definitive identification of Material Conditions affecting the Merger and of Assumed and Excluded Liabilities cannot be determined. Notwithstanding the foregoing, the Parties agree to the following indemnification provisions and general principles of risk allocation during the different phases of Merger implementation:

9.1.1 Indemnification under Separate Operations.

Under the Accelerated Plan after the Effective Date of this Agreement until the Closing Date, or under the Phased Plan after the Effective Date of this

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Agreement until the effective date of an Operating Agreement, the Parties will continue to retain responsibility for their respective operations and systems as separate entities. To the fullest extent permitted by law, each Party shall indemnify, hold harmless and defend the other Party from and against any and all third party claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, which claims arise in whole or in part out of any alleged negligent or willful acts or omissions of the indemnifying Party, its officers, employees and agents, in the performance or implementation of this Agreement, excepting any liability arising out of the negligence or willful acts or omissions of the indemnified Party.

9.1.2 Indemnification under the Phased Plan.

In the event the Parties determine to implement this Agreement under a Phased Plan, then after the effective date of an Operating Agreement until the Closing Date, the allocation of risk and indemnity obligations of the Parties during the term of the Operating Agreement shall be set forth in such Agreement, based upon the following general guidelines:

9.1.2.1 Except to the extent caused by negligence or gross misconduct of TMWA or its agents or resulting directly from TMWA's operation of the Water Utility, all as more particularly set forth in the Operating Agreement, Washoe County shall retain responsibility for and shall indemnify TMWA for claims arising from:

- a. The condition of the Water Utility water system
- b. The condition of Water Utility Water Resources, Real Property, and title to assets
- c. Any employment claims of Washoe County employees hired by TMWA pursuant to the Operating Agreement, arising from such employees' employment by Washoe County or the process for selection of employees to be hired by TMWA, including any labor-related claim by the employees or their bargaining unit.
- d. The performance of Water Utility contracts, except for obligations of contracts expressly assumed by TMWA pursuant to the Operating Agreement
- e. Any violations of or non-compliance with regulatory matters and Environmental Claims
- f. The performance of DWR retained functions
- g. Any breach of Washoe County Financial Obligations
- h. Claims arising from any alleged breach of any Washoe County labor agreement

9.1.2.2 Except to the extent caused by negligence or gross misconduct of Washoe County or its agents, TMWA shall indemnify

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Washoe County for claims arising from TMWA's performance of contract operations, as more specifically set forth in the Operating Agreement, based upon the following general guidelines:

- a. Negligent or gross misconduct in operations within scope of the Operating Agreement
- b. Negligent or willful acts of agents
- c. Employment of Washoe County employees hired by TMWA arising post-hire
- d. Condition of assets caused by TMWA or its agents' negligence or gross misconduct
- e. Performance of contracts expressly assumed by TMWA, Contract claims related to TMWA actions
- f. Any breach of TMWA Obligations
- g. Claims arising from any alleged breach of the IBEW agreement.

9.1.3 Allocation of Liabilities and Indemnity Obligations Following the Closing Date:

Pursuant to the procedures set forth in Article VI, the Parties shall prepare Schedules of Assumed Liabilities and Excluded Liabilities in connection with preparation of the Closing Memorandum. In general, those liabilities that are liabilities of the Water Utility and not general obligations of Washoe County shall be Assumed Liabilities, and those liabilities that are general obligations of Washoe County shall be Excluded Liabilities. Notwithstanding the foregoing, the following shall be Excluded Liabilities, and Washoe County shall have a continuing obligation to indemnify TMWA for:

- a. Errors, omissions, misstatements, misrepresentations, or mismanagement of Washoe County Financial Obligations;
- b. Employment claims and liabilities not expressly assumed by TMWA, including claims under the Washoe County bargaining agreement;
- c. Worker's compensation claims of Washoe County employees hired by TWMA pursuant to this Agreement, to the extent such claims accrued during their employment by Washoe County;
- d. Contract claims for the duration of the applicable limitations period not expressly assumed by TMWA;
- e. Liabilities related to intentional misrepresentations or omissions in disclosures of Material Conditions required by Article VI; and

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- f. Environmental Claims for a period of three years following the Closing Date, subject to any contribution for contributory negligence or practice of TMWA. Washoe County may accumulate and retain Water Revenues as necessary to mitigate any potential financial impacts of this provision and shall remit any unexpended retained funds to TMWA at the end of the three year period.

9.2 Insurance and Risk Management. Following the Effective Date and until the Closing Date, each Party shall maintain its customary levels of insurance, including but not limited to property and casualty insurance that protects its assets and financial obligations against all risks of loss consistent with sound business practice and workers compensation insurance for all of its employees in accordance with state laws. In the case of Washoe County, the Parties acknowledge that Washoe County maintains workers compensation coverage on its employees in accordance with state laws through a program of self insurance and excess loss insurance. As soon as practicable following the Effective Date, each Party agrees to obtain endorsements on applicable insurance policies naming the other Party as an additional insured. In the event TMWA hires Washoe County employees pursuant to the terms of this Agreement, TMWA shall assume responsibility for workers compensation coverage for such employees except to the extent of any claims accruing during their employment by Washoe County.

9.2.1 Insurance under an Operating Agreement. In addition to the foregoing, in the event the Parties enter into an Operating Agreement, Washoe County shall continue to maintain property and casualty insurance on all Transferred Assets, provided that TMWA shall be responsible for providing insurance on any Water Utility assets conveyed to TWMA in conjunction with the Operating Agreement and TMWA shall be responsible for insuring its operations under the Operating Agreement under the terms of such Operating Agreement.

9.2.2 Insurance Following the Closing Date. Effective on the Closing Date, TMWA shall provide property and casualty insurance for the Transferred Assets and any insurable financial obligations assumed pursuant to this Agreement.

9.2.3 Obligation to Confer. In the event any claims or losses arise or are threatened in connection with this Agreement, the Parties shall notify their respective risk managers, who shall confer and provide notice to the appropriate insurers.

9.2.4 Pursuit of Claims and Warranties. The Parties agree that each shall use best efforts to pursue available remedies and sources of recovery and reimbursement for any claims or losses incurred in connection with the implementation of or operations under this Agreement, including but not limited to insurance, self-insurance, and warranties. In the event either Party is pursuing resolution of claims or indemnity obligations arising under or related to this Agreement at the Closing Date, such Party agrees to continue to pursue such

claim to its conclusion (not including the obligation to appeal any decision), except as otherwise agreed in the Closing Memorandum.

9.3 Statutory Limitations. Notwithstanding the foregoing, neither Party waives available NRS chapter 41 liability limitations and other liability limitations available at law in all cases. The Parties acknowledge that their respective abilities to perform their respective obligations under this Agreement is subject to the requirements of NRS Chapter 354 as applicable.

ARTICLE X. TERMINATION , DEFAULT AND RIGHT TO CURE

10.1 Termination. Subject to the conditions set forth in Section 10.3, this Agreement may be terminated and the transactions contemplated herein may be abandoned:

10.1.1 By mutual consent of the Parties; provided, however, that no termination shall impair the rights of any holders of either TMWA Obligations or Washoe County Obligations;

10.1.2 If the parties fail to execute the Addendum or Closing Memorandum, or if implementing Merger through the Phased Plan, fail to execute the Operating Agreement, in each case, within the time periods specified in this Agreement;

10.1.3 If either Party is in Default (as defined below) and such Default (i) cannot be remedied in accordance with Section 10.2 and (ii) would have a material adverse effect on the business, operations, assets or financial condition of one or both of the Parties; or

10.1.4 By either Party, if a final order, decree or ruling enjoining or otherwise prohibiting any of the transactions covered under this Agreement has been issued by any federal or state court in the United States (unless such order, decree or ruling has been withdrawn, reversed or otherwise made inapplicable) and if the failure to consummate such prohibited transaction (i) cannot be remedied in accordance with Section 10.2 and (ii) would have a material adverse effect on the business, operations, assets or financial condition one or both of the Parties.

10.2 Default, Notice and Right to Cure.

10.2.1 Default. A Default occurs when (i) a Party repudiates, breaches or fails to perform in any material respect, within the time frame specified or, if not so specified, within a reasonable time, any Necessary Condition, covenant or term expressed herein, in the Addendum or in the Closing Memorandum; (ii) any Party's representation of a material fact expressed herein, in the Addendum or in the Closing Memorandum was intentionally falsified, or if a Party has a continuing duty to make any representation of a material fact or duty to disclose any material fact, such representation becomes false or such disclosure does not

occur as a result of a subsequent event or occurrence; (iii) any Party's material warranty expressed herein, in the Addendum or in the Closing Memorandum is breached at any time during the period of such warranty; (iv) a Party violates any law material and relevant to this Agreement; or (v) any event occurs that is otherwise described in this Agreement as a default.

10.2.2 Notice and right to cure. Unless otherwise specified in this Agreement, in the Addendum or in the Closing Memorandum, in the event of a Default, the non-defaulting Party shall provide written notice of such Default to the defaulting Party 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.

10.3. Effect of default. If a Default is suffered or caused by any Party and not cured within the period of time specified in Section 10.2.2, the non-defaulting Party may (i) pursue resolution of the matter pursuant to Article XI regarding Dispute Resolution; (ii) suspend any counter-performance due hereunder until the Default is cured or resolved; or (iii) terminate this Agreement pursuant to Section 10.1.

10.4 Termination Plan. In the event either Party is entitled to terminate this Agreement pursuant to Section 10.1 and such right to terminate shall accrue after the Parties have entered into the Operating Agreement, then prior to termination the Parties shall prepare a termination plan ("Termination Plan") to provide for the continuation of retail water service to Washoe County customers, either through the extension of the Operating Agreement, provision for an alternate contractor to assume operations of the Water Utility, or reconstitution of the Water Utility. Neither Party may abandon its obligations under this Agreement or the Operating Agreement until the Termination Plan is implemented. In the event continuation of operations under the Operating Agreement will result in a violation of TMWA Obligations or Washoe Obligations, the Parties agree to immediately implement corrective measures, which may include provisional rate adjustments, to allow the continuation of retail water service to the Washoe County customers without violation of such Obligations until the implementation of the Termination Plan.

10.5 Effect of Termination. In the event of any termination of this Agreement pursuant to Section 10.1 above, with the exception of compliance with the Termination Plan, there shall be no liability on the part of either Washoe County or TMWA, or their respective Boards, officers, or employees, except that the obligations of the Parties that expressly survive under Article IX of this Agreement shall remain in full force and effect and survive the termination of this Agreement.

10.6 Waiver. At any time prior to full merger, the Parties may (i) extend the time for performance of any of the conditions, covenants or terms set forth in this Agreement, in the Addendum or in the Closing Memorandum, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant to this Agreement; and (iii) waive compliance with any of the conditions,

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covenants or terms set forth in this Agreement, in the Addendum or in the Closing Memorandum. Except as set forth in Section 12.1, any such extension or waiver shall be valid only if mutually agreed to by the Parties in writing and duly authorized and executed by the governing boards of the Parties.

ARTICLE XI. DISPUTE RESOLUTION

11.1 Mediation. If, after good faith negotiations to resolve any dispute arising out of or relating to any condition, covenant, term or transaction covered under this Agreement or in any document delivered pursuant to this Agreement, the Parties are unable to agree upon a mutually acceptable resolution, a Party must first demand in writing that the dispute be submitted to the Court Annexed Mediation Program under the Nevada Mediation Rules. Each Party shall bear its own attorney's fees and costs of mediation. Neither Party shall be deemed the prevailing party in any dispute submitted to mediation. No Party shall be permitted to file a submission or demand for arbitration under the Court Annexed Arbitration Program unless first attempting to mediate in good faith to reach a mediated settlement.

11.2 Arbitration. In the event the Parties are unable to resolve any dispute arising out of or relating to any condition, covenant, term or transaction covered under this Agreement or in any document delivered pursuant to this Agreement through the Court Annexed Mediation Program, either Party may then file a written submission of the dispute to the Court Annexed Arbitration Program in accordance with the Nevada Arbitration Rules. Each Party shall bear its own attorney's fees and costs of arbitration. Neither Party shall be deemed the prevailing party in any dispute submitted to arbitration. The Parties hereby stipulate to the subject matter jurisdiction of the Court Annexed Arbitration Program, regardless of the monetary value, amount in controversy, relief sought or the nature of the claim, controversy or dispute arising out of or relating to any condition, covenant, term or transaction covered under this Agreement or in any document delivered pursuant to this Agreement.

ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all undertakings, negotiations or discussions of the Parties, whether oral or written, all of which are integrated herein; provided, however, the Parties acknowledge that certain other agreements and commitments shall be necessary for the implementation of the purposes of this Agreement, including without limitation the Operating Agreement, the Addendum and the Closing Memorandum. 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. Any Amendment to this Agreement must be approved by the Attorney General of the State of Nevada. 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. Notwithstanding the foregoing, the Director of Water Resources and the TMWA General Manager shall have the authority, subject to their mutual

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agreement, to make ministerial modifications to the express terms of this Agreement not inconsistent with its substantive provisions and intent.

12.2 Attorneys Fees; Governing Law and Venue. In any dispute or litigation arising out of this Agreement or any transactions covered under this Agreement, each party shall bear its own attorney's fees and costs. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. Unless otherwise agreed to herein by the Parties, venue to resolve any dispute or for any action or proceeding in mediation or arbitration to construe or enforce the provisions of this Agreement shall be Washoe County

12.3 Construction; Headings. In the event of any dispute regarding any provision of this Agreement, the terms of this Agreement shall be construed neutrally and shall not be construed against or in favor of either Party, notwithstanding the fact that one Party may have been responsible for drafting the initial form of this Agreement. The Parties acknowledge that they have each participated equally in the negotiation and drafting of this Agreement prior to execution and each have been represented by legal counsel of their choice in connection therewith. The headings of the sections and paragraphs of this Agreement are for convenience only and in no way define, limit or affect the scope of substance of any section or paragraph of this Agreement.

12.4 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, but, 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.

12.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12.6 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 Washoe County and TMWA other than with respect to their contractual obligations contained herein.

12.7 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.

12.8 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.

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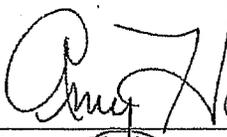
12.9 Recitals, Exhibits and Schedules. The recitals at the beginning of this Agreement and the following Exhibits and Schedules attached to this Agreement are incorporated herein by this reference and made a part hereof as if set forth in full herein.

12.10 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.

12.11 Precedence of Agreements. In the event of any conflict between this Agreement and any subsequent agreement referenced herein (e.g. the Operating Agreement, the Addendum, and the Closing Memorandum), the most recent shall govern.

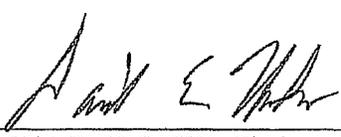
IN WITNESS WHEREOF, the Members have caused this Agreement to be executed as of the date written above.

Attest:


County Clerk

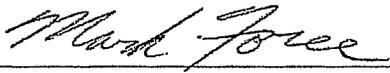


COUNTY OF WASHOE


DAVID E. HUMKE, Chairman
Board of County Commissioners

1-8-2000
Date

Attest:

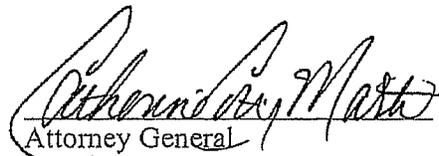

Secretary

TRUCKEE MEADOWS WATER AUTHORITY


MIKE CARRIGAN, Chairman
Board of Directors

12-16-2009
Date

OFFICE OF ATTORNEY GENERAL


Attorney General

1/29/2010
Date

04-7-14