

## **AGREEMENT BETWEEN THE TRUCKEE TAHOE AIRPORT DISTRICT AND TRUCKEE RIVER WATERSHED COUNCIL**

WHEREAS, the Truckee Tahoe Airport District, is an Airport District organized and existing pursuant to California Public Utilities Code sections 22001 and following, (hereinafter referred to as the "District"), has the desire for the services of the Truckee River Watershed Council (hereinafter referred to as "TRWC"), a California Non-Profit 501 (c) {3} Corporation and in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

### **TERMS AND CONDITIONS**

#### **1. SCOPE OF WORK**

TRWC shall furnish the services for the District described in the Scope of Work (Attachment A), attached hereto and by reference incorporated herein. Direction by the District to TRWC to perform under this Agreement shall be made by an authorized representative of the District.

Services and work provided at the District's request by TRWC under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and local laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those to which reference is made in this Agreement.

If District directs or requests in writing that additional work not shown on Attachment A be done by TRWC, the cost of the additional work will be added to the contract price and paid by District on completion of the additional work.

#### **2. TERM**

##### **A. Term.**

The term of this Agreement shall be from November 1, 2017, through October 15, 2018, unless sooner terminated as provided below.

##### **B. Liquidated Damages**

The District is entitled to liquidated damages in the sum of \$0 for each day or portion thereof completion is delayed beyond the specified time as set forth in Paragraph 2A above.

#### **3. CONSIDERATION**

##### **A. Compensation.**

The District shall pay TRWC in accordance with the "Schedule of Fees" (set forth in Attachment A) for the services and work described in "Scope of Work" (also set forth in Attachment A) which are performed by TRWC at the District's request. The schedule of payments to TRWC, as stated in this agreement, meets the requirements of Public Contract Code §20104.50.

**B. Travel and Per Diem.**

Unless otherwise stated in the Scope of Work (Attachment A), TRWC will not be paid or reimbursed for travel expenses or per diem which TRWC incurs in providing services and work requested by the District under this Agreement.

**C. No Additional Consideration.**

Except as expressly provided in this Agreement, TRWC shall not be entitled to, nor receive from the District, any additional consideration, compensation, salary, wages, or other type of remuneration for services or work rendered under this Agreement, including but not limited to overtime, health insurance benefits, worker's compensation coverage, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

**D. Limit Upon Amount Payable Under Agreement.**

The total sum of all payments made by the District to TRWC for services and work performed under this Agreement shall not exceed Two Hundred and Fifty Three Thousand Dollars (\$253,000) (hereinafter referred to as "contract limit"). The District expressly reserves the right to deny any payment or reimbursement requested by TRWC for services or work performed which is in excess of the contract limit.

**E. Billing and Payment.**

TRWC shall comply with the Scope of Work (Attachment A). Upon finding that TRWC has satisfactorily completed the work and performed the services called for in the Scope of Work (Attachment A), the District shall make payment to TRWC pursuant to Attachment A, but shall retain 5% of each such payment in accordance with Section 9203 of the Public Contract Code until the project is completed on or before October 15, 2018.

Should the District determine the services or work have not been completed or performed as called for in the Scope of Work (Attachment A) and/or should TRWC produce an incorrect statement, the District shall withhold payment until the services and work are satisfactorily completed or performed and/or the statement is corrected and resubmitted.

**F. Federal and State Taxes.**

(1) Except as provided in subparagraph (2) below, the District will not withhold any federal or state income taxes or social security from any payments made by the District to TRWC under the terms and conditions of this Agreement.

(2) The District shall withhold California State income taxes from payments made under this Agreement to non-California resident independent TRWCs when it is anticipated that total annual payments to TRWC under this Agreement will exceed one thousand four-hundred ninety-nine dollars (\$1,499.00).

(3) Except as set forth above, the District has no obligation to withhold any taxes or payments from sums paid by the District to TRWC under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of TRWC. The District has no responsibility or liability for payment of TRWC's taxes or assessments.

(4) The total amounts paid by the District to TRWC, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the State Franchise Tax Board.

#### **4. WORK SCHEDULE**

TRWC's obligation is to perform, in a timely manner, those services and work identified in the Scope of Work (Attachment A) which are requested by the District. It is understood by TRWC that its performance of those services and work will require a varied schedule. TRWC, in arranging its own schedule, will coordinate with the District to ensure that all services and work requested by the District under this Agreement will be performed within the time frame set forth by the District in Attachment A.

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS**

Any licenses, certificates, or permits which TRWC determines are reasonably foreseeable to be required by federal, state, county, or local governments for TRWC to provide the services and work described in Attachment A must be procured by TRWC and be valid at the time TRWC enters into this Agreement.

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

TRWC shall provide such office space, supplies, equipment, vehicles, reference materials, support services, and telephone service as is necessary for TRWC to provide the services and work identified in Attachment A to this Agreement. The District is not obligated to reimburse or pay TRWC for any expense or cost incurred by TRWC in procuring or maintaining such items. The costs and expenses incurred by TRWC in providing and maintaining such items is the sole responsibility and obligation of TRWC.

#### **7. DISTRICT PROPERTY**

Products of TRWC's Services and Work.

Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, TRWC's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the District. At the termination of the Agreement, TRWC will convey possession and title to all such properties to the District.

#### **8. WORKERS/ COMPENSATION**

TRWC shall provide workers' compensation insurance coverage, in the legally required amount, for all TRWC's employees of TRWC utilized in providing services and work

pursuant to this Agreement. By executing a copy of this Agreement, TRWC acknowledges its obligations and responsibilities to its employees under the California Labor Code, and warrants that TRWC has complied and will comply during the term of this Agreement with all provisions of the California Labor Code with regard to its employees. TRWC, at the time of execution of this Agreement, will provide the District with evidence of the required workers' compensation insurance coverage.

## **9. PUBLIC WORK**

### **A. Determination.**

~~The services and work to be provided by TRWC under this Agreement constitute a public work within the meaning of California Labor Code Sections 1720 and 1720.3. Accordingly, and as required by Section 1771 of the California Labor Code, TRWC and any subcontractor TRWC under TRWC, shall pay not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holiday and overtime work, to all workers employed in the execution of these services and work requested by the District as described in Attachment A of this Agreement that constitute a public work. California Labor Code Section 1771 is incorporated herein by this reference. TRWC shall ensure compliance with all requirements of a Public Works Project.~~

## **10. INSURANCE**

### **A. General Liability.**

TRWC shall procure, and maintain during the entire term of this Agreement, a policy of general liability insurance which covers all the services and work to be performed by TRWC or other subcontractors under this Agreement. Such policy shall have a per occurrence combined single limit coverage of not less than one million dollars (\$1,000,000). Such policy shall not exclude or except from coverage any of the services and work required to be performed by TRWC under this Agreement. The required policy of insurance shall be issued by an insurer authorized to sell such insurance by the State of California, and have at least a "Best's" policyholder's rating of "A" or "A+". Prior to commencing any work under this Agreement, TRWC shall provide the District: 1) a certificate of insurance documenting evidence of the required coverage; 2) an additional insured endorsement applying to the District, its agents, officers and employees; and, 3) a notice of cancellation or change of coverage endorsement indicating that the policy will not be modified, terminated, or canceled without 30 days' written notice to the District.

### **B. Business Vehicle.**

TRWC shall procure and maintain in force throughout the duration of this Agreement, a business auto liability insurance policy with minimum coverage levels required by California law, combined single limit for bodily injury liability and property damage liability. The coverage shall include all TRWC-owned, non-owned, and hired vehicles employed by the TRWC in the performance of the services and work requested by the District, as described in the Scope of Work (Attachment A). A certificate of insurance shall be provided to the District by TRWC prior to commencing any work under this

Agreement. The policy shall maintain a provision prohibiting the cancellation or modification of said policy except upon 30 days' prior written notice to the District.

**C. Deductibles and Self-Insured Retentions.**

Any deductibles or self-insured retentions shall be declared by TRWC and must be approved by the District prior to TRWC commencing services and work requested by the District under this Agreement. If possible, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the District, its officials, officers, employees, and volunteers, or TRWC shall provide evidence satisfactory to the District guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**D. Sub-Contractors & TRWC.**

TRWC shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein for TRWC.

**E. Unemployment, Disability, and Liability Insurance**

TRWC shall maintain, if so required by law, unemployment, disability and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the TRWC in performing work associated with this Agreement.

**11. STATUS OF TRWC**

All acts of TRWC its agents, officers, employees, and subcontractors relating to the performance of this Agreement, shall be performed by independent contractor, and not as agents, officers, or employees of the District. TRWC, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of, or exercise any right or power vested in, the District. No agent, officer, or employee of the District is to be considered an employee of TRWC. It is understood by both TRWC and the District that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor TRWC:

A. TRWC (unless otherwise specified herein) shall determine the method, details, and means of performing the services and work to be provided by TRWC under this Agreement.

B. TRWC shall be responsible to the District only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to the District's control with respect to the physical action or activities of TRWC in fulfillment of this Agreement.

C. TRWC, its agents, officers and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent TRWCs, and not as employees of the District.

## **12. DEFENSE AND INDEMNIFICATION**

TRWC shall defend, indemnify, and hold harmless the District, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by TRWC, or TRWC's agents, officers, employees, or subcontractors. TRWC's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. TRWC's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other cost which is caused in whole or in part by any act or omission of TRWC, its agents, employees, suppliers, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. TRWC's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for TRWC to procure and maintain a policy of insurance.

## **13. RECORDS AND AUDIT**

### **A. Records.**

TRWC shall prepare and maintain all records required by the various provisions of this Agreement, and federal, state, county, and local law, ordinances, regulations, and directions. TRWC shall maintain these records for a minimum of four years from the termination or completion of this Agreement. TRWC may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, micrographs, or other authentic reproduction of such records.

### **B. Inspections and Audits.**

Any authorized representative of the District shall have access to any books, documents, papers, records, including, but not limited to, financial records of TRWC, which the District determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by TRWC. Further, the District has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

## **14. NON-DISCRIMINATION**

During the performance of this Agreement, TRWC its agents, officers, employees, and subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, ancestry, national origin, physical handicap, medical condition, marital status, age, sex or gender identity. TRWC and its agents, officers, employees, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. TRWC shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-

352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

#### **15. CANCELLATION**

This Agreement may be canceled by the District without cause, and at will, for any reason by giving to TRWC 15 days' written notice of such intent to cancel. Upon such cancellation, the District will pay to TRWC all amounts owing to TRWC for services and work satisfactorily performed to the date of cancellation.

#### **16. ASSIGNMENT**

This is an agreement for the services of TRW C. The District has relied upon the skills, knowledge, experience, and training of TRWC as an inducement to enter into this Agreement. Although it is understood that TRWC will contract with others to carry out the actual work of improvement, TRWC shall not assign or subcontract their management obligations of this Agreement, or any part of it, without the express written consent of the District. Further, TRWC shall not assign any monies due or to become due under this Agreement without the prior written consent of the District.

#### **17. DEFAULT**

If TRWC abandons the work, or fails to proceed with the services and work requested by the District in a timely manner, or fails in any way as required to conduct the services and work as required by the District, the District may declare TRWC in default and terminate this Agreement upon five days' written notice to TRWC. Upon such termination by default, the District will pay to TRWC all amounts owing to TRWC for services and work satisfactorily performed to the date of termination.

#### **18. WAIVER OF DEFAULT**

Waiver of any default by either party to this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph 25 below.

#### **19. CONFIDENTIALITY**

TRWC agrees to comply with various provisions of the federal, state, and local laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by TRWC in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential, subject to the provisions of the California Public Records Act. TRWC agrees to keep confidential all such privileged, restricted or confidential information and records. Disclosure of such information or records shall be made by TRWC only with the express written consent of the District.

#### **20. POST-AGREEMENT COVENANT**

TRWC agrees not to use any confidential, protected, or privileged information which is gained from the District in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement.

## **21. SEVERABILITY**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

## **23. UTILITIES RELOCATION**

Pursuant to California Gov. Code §4215, the District will compensate TRWC for utilities relocation work not shown on the District's plans and the District shall waive liquidated damages for delay caused by the District's failure to provide for removal or relocation of such unknown utilities.

## **24. GOVERNING LAW**

This Agreement shall be governed under the laws of the State of California.

## **25. AMENDMENT**

This Agreement may be extended, modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form, and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

## **26. BOND**

Pursuant to California Civil Code section 9550, if the amount of the expenditure of this construction contract is in excess of twenty-five thousand dollars (\$25,000), TRWC shall, before entering upon performance of the work, ensure that the Contractor doing District's portion of the Project, file a payment bond with and approved by the District. Additionally, Contracture shall ensure that such bond meets all of the requirements shall, before entering upon performance of the work, ensure that the Contractor doing District's portion of the Project, file a payment bond with TRWC and approved by the District. Additionally, Contracture shall ensure that such bond meets all of the requirements stated in California Civil Code Section 3248.

## **27. NOTICE**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the term of this Agreement, which TRWC or the District shall be required, or may desire, to make, shall be in writing and may be personally serviced, or sent by prepaid first class mail to the respective parties as follows:

Hardy Bullock  
Truckee Tahoe Airport District  
10356 Truckee Airport Road  
Truckee CA 96161



Lisa Wallace  
Truckee River Watershed Council  
PO BOX 8568  
Truckee CA 96162

**28. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS AS SET FORTH BELOW.

TRUCKEE TAHOE AIRPORT DISTRICT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

TRWC:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID: \_\_\_\_\_

## **ATTACHEMENT A**

### **AGREEMENT BETWEEN THE DISTRICT AND TRWC FOR THE PROVISION OF SERVICES**

#### **TERM:**

**FROM: November 1, 2017**

**TO: October 15, 2018**

#### **SCOPE OF WORK:**

Labor, equipment, materials, and supplies associated with access road improvements and restoration activities on District properties at Nevada County Assessor's Parcel Numbers 19-450-15 and 19-450-59 and contracted services for earth work, excavation, road surfacing, drainage improvement, gate installation, and revegetation.

#### Truckee Meadows Restoration Project Description

The Truckee Meadows Restoration Project aims to improve hydrologic function within a wetland complex, restore a natural drainage path, and improve access road conditions and stability. The work to be completed is outlined on Truckee River Watershed Council Truckee Meadows Restoration Project drawings (Attachment B) and technical specifications (Attachment C).

Work and products and project work shall be completed consistent with generally accepted practices for the industry.

#### **SCHEDULE OF FEES:**

Project expenses shall be billed as follows:

One payment of \$240,350.00 (Two Hundred Forty Thousand Three Hundred Fifty Dollars). 5% or \$12,650.00 (Twelve Thousand Six Hundred and Fifty Dollars) will remain unpaid until the project is completed and permits and subcontracts are closed out, completed, and paid. The total project cost shall not exceed \$253,000.00, unless otherwise authorized by the District in writing prior to TRWC incurring additional expenses. Upon the District's written approval, authorization to proceed and payment shall be made for any additional items or tasks not initially specified in the scope of work.