

# **TRUCKEE MEADOWS WATER AUTHORITY**

## **TRUCKEE RIVER FUND AGREEMENT**

This Truckee Meadows Water Authority Truckee River Fund Agreement (the "Agreement") is entered into between Truckee Meadows Water Authority, a joint powers authority under the laws of the State of Nevada (the "TMWA"), and the Community Foundation of Northern Nevada (the "Community Foundation"), a Nevada non-profit corporation.

### **I**

#### **CREATION OF FUND**

The Donor and the Community Foundation hereby create The Truckee River Fund (the "Fund"). The Fund is established as a component part of the Community Foundation under Section 1.170A-9(e)(11) of the Treasury Regulations. TMWA and the Community Foundation agree that nothing in this Agreement is to affect the status of the Community Foundation as an organization (a) that is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and (b) that is not a private foundation within the meaning of Section 509(a) of the Code. This Agreement is to be interpreted in a manner consistent with the preceding provisions and in conformance with the requirements of the Code and Treasury Regulations for "component parts" or "component funds" of a "community trust," as those terms are defined or used in Sections 1.170A-9(e)(10) and 1.170A-9(e)(11) of the Treasury Regulations.

### **II**

#### **FUND ASSETS**

A. Description of Fund Assets. TMWA has transferred or will transfer to the Fund an initial contribution of Three Hundred Forty Thousand Dollars (\$340,000.00) in cash. In addition to the property initially transferred to the Fund, the Community Foundation may accept additional property transferred to the Fund by TMWA or by way of gift, grant, contribution, bequest, or devise from any person or entity. However, the Community Foundation may not receive or accept any property that is required to be administered in a manner that the Board of Directors of the Community Foundation (the "Foundation Board") determines, in the Foundation Board's discretion, will (1) jeopardize the federal tax exempt status of the Community Foundation under Section 501(c)(3) of the Code, or (2) result in the Community Foundation being classified as a "private foundation" under Section 509(a) of the Code. All of the assets of the Fund are to be held, managed, invested, and reinvested, and all of the income and principal of the Fund are to be collected and disbursed, exclusively for the charitable uses and purposes described herein in compliance with the Community Foundation's Articles of Incorporation and Bylaws, which are incorporated herein by reference and conclusively assented to and adopted as part of the governing instruments of the Fund.

B. Contingency for Transfers. All transfers to the Fund by TMWA or any other donor are contingent upon the Community Foundation being classified on the date of the transfer as an organization (1) that is described in Section 501(c)(3) of the Code and (2) that is not a "private foundation" as defined in Section 509(a) of the Code. Unless the contingency is waived by TMWA or other donor, the Community Foundation must return the property transferred to it within thirty (30) days after the transfer.

C. Funding Out: The Community Foundation acknowledges that TMWA is subject to the requirements of NRS 354.626 and therefore nothing herein shall obligate TMWA to make contributions to the Fund in excess of funds appropriated for that purpose.

### III

#### PURPOSES OF FUND

The Fund is created and must be operated exclusively for one or more of the exempt purposes specified in Section 501(c)(3) of the Code and the cases and regulations thereunder. The primary purpose of the Fund is to distribute the net income and principal of the Fund for such exempt purposes as recommended by the Advisory Committee (as defined below), consented to by the Board of Directors of TMWA (the "TMWA Board"), and approved by the Foundation Board subject to Article IV, to the organizations and governmental entities described in paragraphs A and B below that are undertaking lawful projects consistent with the purposes and uses of the Fund. Specifically, the Fund shall be used exclusively for projects that protect and enhance water quality or water resources of the Truckee River, or its watershed. For purposes of this Agreement, the organizations and governmental entities described in paragraphs A and B below are referred to collectively as the "Charitable Beneficiaries" and individually as the "Charitable Beneficiary."

A. Public Charities. The Charitable Beneficiaries include organizations that are (1) exempt from federal income taxation under Section 501(c)(3) of the Code, and (2) classified as organizations described in Section 509(a)(1), Section 509(a)(2), or Section 509(a)(3) of the Code.

B. Governmental Entities. The Charitable Beneficiaries also include states of the United States of America, any of their political subdivisions, the United States of America, and the District of Columbia, but only if distributions to such governmental entities are made exclusively for public purposes.

C. Variance Power. The Fund is protected from obsolescence in accordance with the provisions specified in the Articles of Incorporation and Bylaws of the Community Foundation. Should the primary purposes for which the Fund is created become obsolete or incapable of fulfillment, then the Foundation Board shall consult with the TMWA Board concerning distribution of the remaining assets of the Fund to

Charitable Beneficiaries for uses and purposes that are as similar as possible to the primary purposes set forth in this Agreement.

## IV

### ADMINISTRATION

A. General Powers and Duties of Administration. The Fund is to be administered as a component part of the Community Foundation and is subject to all of its governing instruments, including, but not necessarily limited to, the Articles of Incorporation and Bylaws, and the policies and procedures established by the Foundation Board from time to time. The Community Foundation is to be responsible for the preparation and filing of all income tax returns and other legal and financial reports for the Fund that are required by the Internal Revenue Service, the State of Nevada, and any other governmental agencies.

B. Advisory Committee. The Fund is to be administered by an advisory committee ("Advisory Committee") comprised of a total of nine (9) members, consisting of three (3) members selected by each of the City of Reno, the City of Sparks and Washoe County. None of the members of the Advisory Committee may be elected officials. The members of the Advisory Committee shall serve at the pleasure of their respective local governments. The Advisory Committee shall have the authority to expend up to \$25,000 from the Fund, cumulative each fiscal year, for administrative purposes. For all other expenditures, the Advisory Committee shall be required to adhere to the Project Funding Protocols set forth in subpart C of this Article IV. The Advisory Committee shall make recommendations to the TMWA Board and the Foundation Board regarding (1) distributions of income and principal from the Fund to potential Charitable Beneficiaries, (2) the investments of the Fund, and (3) any other aspects of the administration of the Fund and the Community Foundation considered appropriate by the Advisory Committee. All distributions of income and principal from the Fund must be exclusively for the exempt purposes described in Article III above, and the Fund must be organized and operated exclusively for the exempt purposes described therein. The recommendations of the Advisory Committee to the TMWA Board, and the Foundation Board, are solely recommendations, and the recommendations may be accepted or rejected, in whole or in part, by the TMWA Board and the Foundation Board in their sole and absolute discretion.

C. Project Funding Protocols. The Advisory Committee shall adhere to the following procedures and requirements in making its recommendations for project funding to the TMWA Board and the Foundation Board:

1. The Advisory Committee shall accept proposals for projects from prospective Charitable Beneficiaries of the Fund.
2. The Advisory Committee shall identify and select potential projects for funding.

3. The Advisory Committee shall be responsible for ensuring that the recommendations submitted to the TMWA Board and the Foundation Board are in compliance with the exclusive purposes of the Fund and the Community Foundation's policies.

4. The Advisory Committee shall have the responsibility of securing preliminary approval from the TMWA Board, which may disapprove projects for any reason, or may approve projects by resolution, subject to Foundation Board approval. Thereafter, the Advisory Committee shall have the responsibility of seeing final approval from the Foundation Board, which may disapprove a project or prospective Charitable Beneficiary if, in the Foundation Board's opinion, such project or prospective Charitable Beneficiary may jeopardize the status of the Community Foundation as a tax exempt entity, or which may result in its classification as a "private foundation."

D. Administrative Fees. The Fund is to pay quarterly administrative fees to the Community Foundation for the administration, distribution, and investment management of the Fund. The quarterly administrative fee for the Fund is to be established by the Foundation with the consent of the TMWA Board. The administrative fee for each calendar quarter is to be paid in the first month of the next calendar quarter by automatic deduction from the assets of the Fund. The Foundation Board may in its discretion periodically review and revise the amount of administrative fees to be charged to the Fund to ensure that the administrative fees are at all times reasonable and proper. However, the administrative fees charged to the Fund must not be greater than the amount of fees charged to other component funds of the Community Foundation that are of comparable size. The Community Foundation must notify TMWA and the Advisory Committee of any changes to the administrative fees that are approved by the Foundation Board.

E. Accountings. The Community Foundation must render accountings for the Fund to TMWA and the members of the Advisory Committee at least annually. Unless any person to whom an accounting is required to be rendered delivers a written objection to the Foundation Board within sixty (60) days after receipt of the accounting, the accounting is to be final and conclusive with respect to all transactions disclosed in the accounting. After settlement of the accounting by the agreement of the parties objecting to it, or by expiration of the sixty (60) day period, the Community Foundation will no longer be liable with respect to all transactions disclosed in the accounting, except for any intentional wrongdoing or fraud committed by any of the employees, agents, representatives, or board members of the Community Foundation.

V

**DISTRIBUTIONS OF INCOME AND PRINCIPAL**

A. Minimum Annual Distributions. During each taxable year of the Community Foundation, and subject to the provisions of article III above, the Community Foundation, subject to the procedures set forth herein, must distribute from the Fund to or for the benefit of one (1) or more Charitable Beneficiaries as determined above the minimum amount required by the governing instruments of the Community Foundation and by the Code and Treasury Regulations to maintain the Community Foundation as an organization (1) that is described in Section 501(c)(3) of the Code and (2) that is not a "private foundation" within the meaning of Section 509(a) of the Code. The minimum distributions required to be made during each taxable year pursuant to this paragraph A are hereafter referred to as the "Minimum Annual Distributions."

B. Discretionary Annual Distributions. During each taxable year of the Fund, the Community Foundation, subject to the procedures set forth herein, may also make distributions from net income and principal of the Fund in excess of the Minimum Annual Distributions to or for the benefit of one (1) or more Charitable Beneficiaries as determined in accordance with Article IV above. However, the aggregate amount of distributions made by the Community Foundation pursuant to paragraphs A and B of this article V during any taxable year of the Community Foundation may not exceed the greater of (a) the Minimum Annual Distributions or (b) the sum of the amounts described in subparagraphs 8.1, B.2, and 8.3 below.

1. Ten percent (10%) of the aggregate fair market value of the Fund, determined as of the first day of the taxable year;
2. The aggregate fair market value of contributions made to the Fund during the taxable year; plus
3. The net income generated by the Fund for the taxable year.

For purposes of determining the fair market value of the principal and contributions to the Fund pursuant to this paragraph B, the Foundation Board may utilize any commonly accepted valuation method, so long as such method is consistently applied. Any net income not distributed pursuant to paragraphs A and B of this Article V is to be accumulated and added to principal.

C. Fund Distribution Requirements. To maintain eligibility to receive distributions from the Fund, each Charitable Beneficiary must comply at all times with the following requirements:

1. Charitable Beneficiaries must be exempt from federal income taxation under Section 501(c)(3) of the Code;

2. Charitable Beneficiaries shall use all Fund distributions toward projects that are appropriate and legal public expenditures;

3. Charitable Beneficiaries must provide financial details and/or reports of their organizations upon request;

4. Charitable Beneficiaries must not use any Fund distributions for political contributions or political advocacy;

5. Charitable Beneficiaries must either implement the projects, activities, and/or programs for which they received Fund distributions within 45 days of the end of the fiscal year in which such distributions are received, or must return all such distributions to the Community Foundation forthwith;

6. Charitable Beneficiaries must provide Community Foundation a report detailing the completion of their projects, activities, and/or programs; and

7. Charitable Beneficiaries must sign an agreement regarding their compliance with the qualifications hereof.

D. Disposition of Fund upon Termination. Upon the termination of the Fund pursuant to paragraph A or B of Article VI below, the Fund as then constituted (including both principal and any accrued and undistributed income) must be distributed in accordance with Paragraph C of Article IV.

## VI

### TERM

A. Except as provided in Paragraph B. below, the Fund is to continue unless and until either Party terminates this agreement by written notice no less than six (6) months prior to the stated date of termination.

B. Early Termination of Fund. If at any time during the term of the Fund, the Fund contains assets with an aggregate fair market value of less than Ten Thousand Dollars (\$ 10,000.00), and the TMWA Board determines that continued administration of the Fund would be impracticable or that the costs of administration would outweigh the anticipated benefits of continued administration, then the TMWA Board may terminate the Fund and distribute the Community Foundation the remaining assets of the Fund in accordance with Article IV above.

## VII

### MISCELLANEOUS

A. Compliance with Code and Treasury Regulations. The Fund must comply with and is to be restricted by the provisions of the Code and Treasury Regulations that are applicable to it. The Agreement may be amended from time to time to comply with the applicable provisions of the Code and Treasury Regulations.

B. Amendments. This Agreement may be amended by an instrument in writing executed by a majority of all persons then serving on the Advisory Committee and by a majority of the TMWA Board, and by an authorized representative of the Community Foundation. However, the Agreement may not be amended to authorize the affairs of the Fund to be conducted in any manner or for any purposes contrary to the provisions of Section 501(c)(3) of the Code and the Treasury Regulations thereunder.

C. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

D. Gender and Number. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, are to each be considered to include the others whenever the context so indicates.

E. Choice of Law. The validity of this Agreement and the construction of its provisions are to be governed by and construed in accordance with the laws of the State of Nevada as in effect from time to time, and the Fund is to be administered in and under the laws of the State of Nevada.

F. Authorization. The undersigned, by their signatures, represent and warrant that they are authorized agents of their respective entities and are authorized to execute this Amendment.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment as of the date written above.

TRUCKEE MEADOWS WATER AUTHORITY

COMMUNITY FOUNDATION OF WESTERN  
NEVADA

Dated this 17 day of February, 2023

Dated this 13 day of February, 2023

By John Zimmerman  
John Zimmerman

By Eaton Dunkelberger  
Eaton Dunkelberger

Its: General Manager

Its: President & CEO