



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: January 10, 2017

DATE: December 9, 2016
TO: Board of County Commissioners
FROM: Eric Crump, Operations Division Director
Community Services Department, 328.2182, ecrump@washoecounty.us
THROUGH: Dave Solaro, Director
Community Services Department, 328.3624, dsolaro@washoecounty.us
SUBJECT: Possible action to: 1) Approve a License Agreement between Washoe County and Truckee Meadows Water Authority for a Galena Creek Stream Gage facility; and 2) approve a License Agreement between Washoe County and Truckee Meadows Water Authority for a Whites Creek Stream Gage facility; and 3) authorize the Community Services Department Director to sign both Agreements and future amendments on behalf of Washoe County. (Commission District 2.)

SUMMARY

If approved, the Agreements authorize the Truckee Meadows Water Authority (TMWA) a non-exclusive revocable license to access, construct, install, and maintain a steel gage pole with a solar charged, battery driven data logger system (see photos in Agreements Exhibit A) on APN 047-010-01 and APN 049-752-08, a portion of Galena Creek Open Space and Whites Creek Open Space respectively. The purpose of this project is to monitor and record flows in the Galena Creek and Whites Creek stream zones. There is no expiration to the agreement, unless terminated by either party. Location maps are attached as Exhibit C to the License Agreements.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

On November 10, 2015, the Board of County Commissioners (Board) approved a similar license agreement between Washoe County and TMWA for a Thomas Creek Stream Gage Facility, and authorized the Director of Community Services to sign the Agreements and future amendments on behalf of Washoe County.

BACKGROUND

If approved, the Agreements authorizes TMWA a non-exclusive revocable license to access, construct, install, and maintain a steel gage pole with a solar charged, battery driven data logger system (see photos in Agreements Exhibit A) on APN 047-010-01 and

AGENDA ITEM # 12

APN 049-752-08, a portion of Galena Creek Open Space and Whites Creek Open Space respectively. The property is owned by Washoe County and managed through its Community Services Department. The Whites Creek Stream gage is in the vicinity of the Whites Creek Trail, but trail use and access will not be negatively impacted by this project.

TMWA will be required to obtain all permits as required by law and will be responsible for all costs associated with installation, operations, and maintenance. There is no expiration to the agreements, unless terminated by either party.

FISCAL IMPACT

No fiscal impact to the Community Services Department-Regional Parks. The cost and expense of all labor, materials, maintenance and repair of the equipment on these sites is entirely the responsibility of TMWA.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a License Agreement between Washoe County and Truckee Meadows Water Authority for a Galena Creek Stream Gage facility; and approve a License Agreement between Washoe County and Truckee Meadows Water Authority for a Whites Creek Stream Gage facility; and authorize the Community Services Department Director to sign both Agreements and future amendments on behalf of Washoe County.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve: 1) a License Agreement between Washoe County and Truckee Meadows Water Authority for a Galena Creek Stream Gage facility; and 2) a License Agreement between Washoe County and Truckee Meadows Water Authority for a Whites Creek Stream Gage facility; and 3) authorize the Community Services Department Director to sign both Agreements and future amendments on behalf of Washoe County."

LICENSE AGREEMENT
(Galena Creek Stream Gage)

THIS AGREEMENT is between WASHOE COUNTY, a political subdivision of the State of Nevada (“Licensor”) and TRUCKEE MEADOWS WATER AUTHORITY, 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 NRS Chapter 277 (“Licensee”) and is dated January __, 2017.

WITNESSETH:

WHEREAS, Licensor is the sole owner of certain real property located in Washoe County, State of Nevada, identified as Assessor’s Parcel Number 047-010-01, and more particularly described on the attached Exhibit B (the “Property”); which Licensor uses in connection with the operation of parks, trails and open space; and

WHEREAS, Licensee desires to utilize a portion of the Property to construct and maintain Stream Gage Facilities (defined below) for discharge record computations on Galena Creek.

NOW THEREFORE, in consideration of the mutual exchange of promises and other consideration, the receipt of which is hereby acknowledged, and the mutual covenants described herein, the parties hereto agree as follows:

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive, revocable license (the “License”) to access, construct, install, and maintain a steel gage pole with a solar charged, battery driven data logger system (reasonably similar to the gage shown on the attached Exhibit A), (collectively, “Stream Gage Facilities”), on a portion of the Property, more particularly described in Exhibit “B” and shown on Exhibit “C” (“License Area”), on the terms and conditions of this Agreement. Licensee acknowledges and agrees that use of the License Area is subject to the conditions of this License. Licensor’s operations shall at all times have priority over any use of the Property or License Area by Licensee, and Licensee shall not directly or indirectly use, occupy, or improve the Property or License Area or permit others to do so in any manner that impairs, impedes, or otherwise adversely affects Licensor’s use of the Property for public operations.

2. **Warranty and Representations by Licensee.** Licensee acknowledges Licensor’s rights to use and access the License Area shall at all times remain senior to rights of Licensee, and that there are times that the License Area will need to be utilized by Licensor. Licensor makes no representation or warranty, and shall have no obligation or liability of any kind whatsoever to any person, arising from or related to the operation and maintenance of the Property or Licensor’s use of the License Area, excluding therefrom any act or negligence of Licensor.

3. **Term.** The term of this Agreement shall be perpetual unless (a) Licensee is in material default or breach of any provision hereunder, and such default or breach is not cured within 60 days of written notice from Licensor, or if such default or breach cannot be cured within sixty days, Licensee has failed to commence to cure such default within the 60 days and continuously and diligently pursues the cure of such default thereafter, or (b) Licensor or Licensee terminate this Agreement by providing written notice six (6) months in advance to the other party.

4. **Removal of Equipment.** Upon termination of this License, Licensee shall remove any and all materials and equipment that have been placed on the License Area, including the Stream Gage Facilities and Licensee shall return the License Area to its original condition. Should Licensee fail to remove such improvements, Licensee agrees to pay Licensor for the removal of the improvements and compensate Licensor for any damage which has accrued from Licensee's use of the License Area or failure to comply with the provisions of this Section.

5. **Permits and Laws.** Licensee shall obtain, at its sole cost, any and all permits (if any) which may be required for Licensee's use of the License Area. Licensee further agrees to comply with all applicable Federal, state and local laws, rules and regulations while exercising its rights under this License. Licensee agrees to indemnify and hold harmless Licensor from any and all damages, fines, or penalties resulting from Licensee's failure to obtain the necessary permits and/or failure to comply with any applicable laws, rules or regulations, or any use of the License Area by Licensee or an agent or invitee of Licensee.

6. **Limitation to Described Purpose.** The License Area may be used by Licensee solely for the uses described herein. No permanent buildings or improvements, additions, alterations, or modification of any kind, sort or nature, may be constructed on the License Area, with the exception of the Stream Gage Facilities, which may be removed if required under Section 4.

7. **Indemnification of Licensor and Attorney's Fees.** Licensee agrees to protect, indemnify, defend (at Licensor's option) and save harmless Licensor, against and from any and all claims, losses, damages or liability (including reasonable attorney's fees) arising from Licensee's use of, or access to, the License Area except to the extent caused by any act or negligence of Licensor. Licensor agrees that Licensee's liability shall at all times be subject to the limitations set forth in Chapter 41 of the Nevada Revised Statutes (NRS).

8. **Liability Insurance.** Licensee agrees to procure and maintain in force during the term of this License, at Licensee's expense, public liability insurance in companies and through brokers approved by the Insurance Commissioner of the State of Nevada and duly licensed to insure activities on the License Area.

9. **Condition of Premises.** Licensor does not warrant or represent that the License Area is safe or suitable for the purposes stated herein or intended to be used

under the terms of this License, and Licensee agrees to accept the License Area in its “as is” condition, with all faults.

10. **Right to Enter.** It is understood and agreed that the Licensor shall have the right at any time during the term of this License to use the License Area for its own purposes and to enter in and upon the License Area to access its Property. Any vehicle, tools, or other equipment which blocks access to the property, where the owner cannot reasonably be contacted, will be towed at Licensee’s expense.

11. **Assignability.** The License granted hereunder is a privilege granted to Licensee and is not assignable to any person or entity.

12. **Waste, Nuisance or Unlawful Activity.** Licensee shall not allow any waste beyond reasonable use and wear on the License Area or allow the License Area to be used, for any purpose prohibited by law, ordinance, rule or regulation, or for any purpose which will constitute a nuisance. Licensee agrees to pay the cost of repairs beyond such reasonable wear and tear upon the License Area for damages caused by Licensee.

13. **Liens and Encumbrances.** During the term of this License, or any extension thereof, Licensee shall not place or permit the placement or suffering of any liens or encumbrances on the License Area, and shall keep it free and clear of all liens and encumbrances arising out of any work performed, material furnished or obligations incurred by the Licensee.

14. **Maintenance.** Licensee agrees to remove any litter, waste, or construction refuse that may accumulate on the License Area as a result of Licensee’s use. Licensee, at its cost, agrees to maintain and repair the Stream Gage Facilities in clean and proper working condition. Licensor shall have no obligations or liability whatsoever for any damage, theft, or destruction to the Stream Gage Facilities caused by third parties.

15. **Entire Agreement.** This document embodies the entire understanding of the parties as to the License that is the subject matter hereof, and there are no terms, covenants or conditions of such License other than those set forth herein. This License may be amended only by a document in writing, executed by both parties.

16. **No Waiver.** No waiver of any breach or breaches of any provision hereof shall be construed to be a waiver of any proceeding or succeeding breach of said provision or any provisions hereof.

17. **Notices.** All notices herein provided to be given, or which may be given, by any party to the other, shall be deemed to have been fully given when served personally on Licensor or Licensee, or when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

Licensors: Washoe County
Director, Community Services Department
P.O. Box 11130
Reno, NV 89520

Licensee: Truckee Meadows Water Authority
c/o Heather Edmunson, Land Agent
P.O. Box 30013
Reno, Nevada 89520

IN WITNESS WHEREOF, the parties have signed this License as of the day and year first above written.

<p>LICENSOR: WASHOE COUNTY, a political subdivision of the State of Nevada By: _____ Name: _____ Title: _____</p>	<p>LICENSEE: TRUCKEE MEADOWS WATERAUTHORITY By: _____ John R. Zimmerman, Water Resources Manager</p>
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EXHIBIT "A"



EXHIBIT "B"

Said Stream Gage to be located in Galena Creek, County of Washoe, State of Nevada, at the following described property:

- Gage pole location 39.3552 latitude
-119.8549 longitude, referenced to North American Datum of 1983.

APN: 047-010-01

EXHIBIT "C"



LICENSE AGREEMENT
(Whites Creek Stream Gage)

THIS AGREEMENT is between WASHOE COUNTY, a political subdivision of the State of Nevada (“Licensor”) and TRUCKEE MEADOWS WATER AUTHORITY, 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 NRS Chapter 277 (“Licensee”) and is dated January ___, 2017.

WITNESSETH:

WHEREAS, Licensor is the sole owner of certain real property located in Washoe County, State of Nevada, identified as Assessor’s Parcel Number 049-752-08, and more particularly described on the attached Exhibit B (the “Property”); which Licensor uses in connection with the operation of parks, trails and open space; and

WHEREAS, Licensee desires to utilize a portion of the Property to construct and maintain Stream Gage Facilities (defined below) for discharge record computations on Whites Creek.

NOW THEREFORE, in consideration of the mutual exchange of promises and other consideration, the receipt of which is hereby acknowledged, and the mutual covenants described herein, the parties hereto agree as follows:

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive, revocable license (the “License”) to access, construct, install, and maintain a steel gage pole with a solar charged, battery driven data logger system (reasonably similar to the gage shown on the attached Exhibit A), (collectively, “Stream Gage Facilities”), on a portion of the Property, more particularly described in Exhibit “B” and shown on Exhibit “C” (“License Area”), on the terms and conditions of this Agreement. Licensee acknowledges and agrees that use of the License Area is subject to the conditions of this License. Licensor’s operations shall at all times have priority over any use of the Property or License Area by Licensee, and Licensee shall not directly or indirectly use, occupy, or improve the Property or License Area or permit others to do so in any manner that impairs, impedes, or otherwise adversely affects Licensor’s use of the Property for public operations.

2. **Warranty and Representations by Licensee.** Licensee acknowledges Licensor’s rights to use and access the License Area shall at all times remain senior to rights of Licensee, and that there are times that the License Area will need to be utilized by Licensor. Licensor makes no representation or warranty, and shall have no obligation or liability of any kind whatsoever to any person, arising from or related to the operation and maintenance of the Property or Licensor’s use of the License Area, excluding therefrom any act or negligence of Licensor.

3. **Term.** The term of this Agreement shall be perpetual unless (a) Licensee is in material default or breach of any provision hereunder, and such default or breach is not cured within 60 days of written notice from Licensor, or if such default or breach cannot be cured within sixty days, Licensee has failed to commence to cure such default within the 60 days and continuously and diligently pursues the cure of such default thereafter, or (b) Licensor or Licensee terminate this Agreement by providing written notice six (6) months in advance to the other party.

4. **Removal of Equipment.** Upon termination of this License, Licensee shall remove any and all materials and equipment that have been placed on the License Area, including the Stream Gage Facilities and Licensee shall return the License Area to its original condition. Should Licensee fail to remove such improvements, Licensee agrees to pay Licensor for the removal of the improvements and compensate Licensor for any damage which has accrued from Licensee's use of the License Area or failure to comply with the provisions of this Section.

5. **Permits and Laws.** Licensee shall obtain, at its sole cost, any and all permits (if any) which may be required for Licensee's use of the License Area. Licensee further agrees to comply with all applicable Federal, state and local laws, rules and regulations while exercising its rights under this License. Licensee agrees to indemnify and hold harmless Licensor from any and all damages, fines, or penalties resulting from Licensee's failure to obtain the necessary permits and/or failure to comply with any applicable laws, rules or regulations, or any use of the License Area by Licensee or an agent or invitee of Licensee.

6. **Limitation to Described Purpose.** The License Area may be used by Licensee solely for the uses described herein. No permanent buildings or improvements, additions, alterations, or modification of any kind, sort or nature, may be constructed on the License Area, with the exception of the Stream Gage Facilities, which may be removed if required under Section 4.

7. **Indemnification of Licensor and Attorney's Fees.** Licensee agrees to protect, indemnify, defend (at Licensor's option) and save harmless Licensor, against and from any and all claims, losses, damages or liability (including reasonable attorney's fees) arising from Licensee's use of, or access to, the License Area except to the extent caused by any act or negligence of Licensor. Licensor agrees that Licensee's liability shall at all times be subject to the limitations set forth in Chapter 41 of the Nevada Revised Statutes (NRS).

8. **Liability Insurance.** Licensee agrees to procure and maintain in force during the term of this License, at Licensee's expense, public liability insurance in companies and through brokers approved by the Insurance Commissioner of the State of Nevada and duly licensed to insure activities on the License Area.

9. **Condition of Premises.** Licensor does not warrant or represent that the License Area is safe or suitable for the purposes stated herein or intended to be used

under the terms of this License, and Licensee agrees to accept the License Area in its “as is” condition, with all faults.

10. **Right to Enter.** It is understood and agreed that the Licensor shall have the right at any time during the term of this License to use the License Area for its own purposes and to enter in and upon the License Area to access its Property. Any vehicle, tools, or other equipment which blocks access to the property, where the owner cannot reasonably be contacted, will be towed at Licensee’s expense.

11. **Assignability.** The License granted hereunder is a privilege granted to Licensee and is not assignable to any person or entity.

12. **Waste, Nuisance or Unlawful Activity.** Licensee shall not allow any waste beyond reasonable use and wear on the License Area or allow the License Area to be used, for any purpose prohibited by law, ordinance, rule or regulation, or for any purpose which will constitute a nuisance. Licensee agrees to pay the cost of repairs beyond such reasonable wear and tear upon the License Area for damages caused by Licensee.

13. **Liens and Encumbrances.** During the term of this License, or any extension thereof, Licensee shall not place or permit the placement or suffering of any liens or encumbrances on the License Area, and shall keep it free and clear of all liens and encumbrances arising out of any work performed, material furnished or obligations incurred by the Licensee.

14. **Maintenance.** Licensee agrees to remove any litter, waste, or construction refuse that may accumulate on the License Area as a result of Licensee’s use. Licensee, at its cost, agrees to maintain and repair the Stream Gage Facilities in clean and proper working condition. Licensor shall have no obligations or liability whatsoever for any damage, theft, or destruction to the Stream Gage Facilities caused by third parties.

15. **Entire Agreement.** This document embodies the entire understanding of the parties as to the License that is the subject matter hereof, and there are no terms, covenants or conditions of such License other than those set forth herein. This License may be amended only by a document in writing, executed by both parties.

16. **No Waiver.** No waiver of any breach or breaches of any provision hereof shall be construed to be a waiver of any proceeding or succeeding breach of said provision or any provisions hereof.

17. **Notices.** All notices herein provided to be given, or which may be given, by any party to the other, shall be deemed to have been fully given when served personally on Licensor or Licensee, or when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

EXHIBIT "A"



EXHIBIT "B"

Said Stream Gage to be located in Whites Creek, County of Washoe, State of Nevada, at the following described property:

- Gage pole location 39.3851 latitude
-119.8353 longitude, referenced to North American Datum of 1983.

APN: 049-752-08

EXHIBIT "C"

