

AMENDMENT NO. 1
TO
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF BURLEY, IDAHO
FOR
DESIGN AND CONSTRUCTION
OF THE
BURLEY WASTEWATER CAPITAL IMPROVEMENTS PROGRAM
BURLEY, CASSIA COUNTY, IDAHO

THIS AMENDMENT NO. 1 is entered into this 2nd day of June, 2005, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer, Walla Walla District (hereinafter the "District Engineer"), and the City of Burley, Idaho (hereinafter the "Non-Federal Sponsor"), represented by the Mayor of the City of Burley, Idaho.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, and rural Utah (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended;

WHEREAS, the Energy and Water Appropriations Act of 2004, Public Law 108-137, included \$4,450,000 for such projects in the State of Idaho and \$2,000,000 was identified in Congressional Conference language for use in the City of Burley, Idaho.

WHEREAS, the Government and the Non-Federal Sponsors entered into a Project Cooperation Agreement (hereinafter the "Agreement") on July 8, 2004 for the design and construction of the Burley Wastewater Treatment Plant Administration Building in Burley, Idaho, as generally described in the Burley Wastewater Capital Improvements Program Scope of Work, dated June 21, 2004;

WHEREAS, the Project, as originally defined in Article I.A. of the Agreement, has been completed and the Government and Non-Federal Sponsor desire to expand the original Scope of Work to include a sewer line extension project;

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to amend the Agreement as follows:

1. The 8th "WHEREAS" clause is deleted and replaced with the following:

WHEREAS, Section 101 of the Energy and Water Development Appropriations Act, 2005 (Public Law 108-447), provides that credits and reimbursements afforded for all environmental infrastructure projects shall not exceed \$10,000,000 in each fiscal year in each State wherein such projects shall be undertaken and also provides that total credits and reimbursements afforded under certain general authorities and under specific project authority shall not exceed \$50,000,000 for all applicable projects in each fiscal year; and

2. Article I.A. is changed by adding the following sentence after the first sentence, "The Project shall also include a sewer line extension project for the Overlook Trailer Village in Burley, Idaho, as generally described in the Burley Wastewater Capital Improvements Program Supplemental Scope of Work, dated March 9, 2005."

3. Article II.K is changed by adding, ", subject to the availability of funds," after the word "reimbursing" and before the words "the Non-Federal Sponsor."

4. Article VI.A. is changed by deleting everything after, ". . . reimbursements in the upcoming fiscal year." and replacing it with the following:

The total project costs are projected to be \$1,790,300; the Government's share of total project costs is projected to be \$1,342,725; the Non-Federal Sponsor's share of total project costs is projected to be \$447,575; total project costs to be incurred by the Government are projected to be \$80,300; total project costs to be incurred by, or on behalf of, the Non-Federal Sponsor are projected to be \$1,710,000; and total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$1,262,425. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

5. Article VI.B is changed by adding, "subject to the availability of funds and the limitations of Article VII of this Agreement," after the word "paragraph" and before the words "the Government shall contribute."

6. The last sentence of Article VI.B.2 is changed by adding, "the availability of funds and" after the words "subject to" and before the words "Article VII of this Agreement."

7. The first sentence of Article VI.B.3 is changed by adding, "the availability of funds and" after the words "subject to" and before the words "Article VII of this Agreement." Article VI.B.3 is further changed by adding the following sentence at the end of the Section, "The interest penalty shall not accrue, nor be compounded, during suspension of the Government's performance or upon termination of this agreement under Article XV of this Agreement."

8. Article VI.D.1 is changed by adding, "the availability of funds and" after the words "subject to" and before the words "Article VII of this Agreement" and deleting the word "cash" after the words "make a" and before the words "payment to the Non-Federal Sponsor."

9. Article VII.E is deleted and replaced with the following:

E. As of the effective date of this Agreement, \$4,450,000 of Federal funds have been appropriated by the Congress for the Idaho portion of the Section 595 Program, of which \$2,000,000 is currently projected to be available for the Project. The Government makes no commitment to request the Congress to appropriate additional Federal funds for the Section 595 Program or the Project. Further, the Government's financial participation in the Project is limited to the Federal funds that the Government actually makes available to the Project. In the event the Government determines that the amount of Federal funds the Government has made available to the Project in the then-current fiscal year, or the amount of Federal funds the Government projects will be available for the Project in the upcoming fiscal year, are not sufficient to meet the Federal share of total project costs and the Federal share of costs for data recovery activities in accordance with Article XIX.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming fiscal year, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that Federal funds made available to the Project will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the Project, the Government's future performance under this Agreement shall be suspended. However, if paragraph F. of this Article prevents the Government from making available sufficient Federal funds to meet the Federal share of total project costs in the then-current fiscal year, then only the Government's performance related to reimbursement in accordance with Article VI.B. of this Agreement shall be suspended.

10. Article VII.F is changed by deleting the reference to Section 102 of the Energy and Water Development Appropriations Act of 2000 (Public law 106-60) and replacing it with Section 101 of the Energy and Water Development Appropriations Act of 2005 (Public Law 108-447).

11. Article XV.B is deleted and replaced with the following:

B. In the event the Government's future performance under this Agreement is suspended pursuant to Article VII.E. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of total project costs and the Federal share of costs for data recovery activities in accordance with Article XIX.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming fiscal year; or the Government or the Non-Federal Sponsor elects to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XVI.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the

Non-Federal Sponsor's responsibilities under Article XVI.C. of this Agreement, such suspension shall remain in effect until: the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XVI.C. of this Agreement; or the Government terminates this Agreement in accordance with the provisions of Article XVI.C. of this Agreement.

12. Article XVI.C is changed by deleting everything after "In the event the Non-Federal Sponsor" and replacing it with the following:

does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.K. of this Agreement.

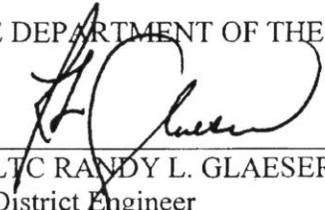
13. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the District Engineer.

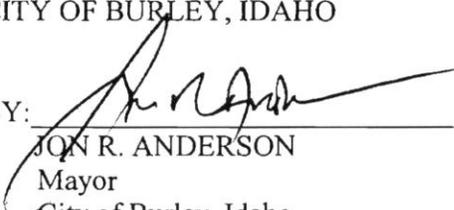
THE DEPARTMENT OF THE ARMY

CITY OF BURLEY, IDAHO

BY:


LTC RANDY L. GLAESER
District Engineer
Walla Walla District

BY:


JON R. ANDERSON
Mayor
City of Burley, Idaho

DATE:

2 June 05

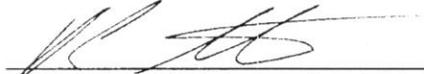
DATE:

May 9, 2005

CERTIFICATE OF AUTHORITY

I, Randy Stone, City Attorney, do hereby certify that I am the principal legal officer of the City of Burley, Idaho and the City of Burley, Idaho is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 1 between the Department of the Army and the City of Burley, Idaho in connection with the Burley Wastewater Capital Improvements Program, Burley, Cassia County, Idaho, and to pay damages in accordance with the terms of the Agreement and Amendment No. 1, if necessary, in the event of the failure to perform, and that the persons who have executed Amendment No. 1 on behalf of the City of Burley, Idaho, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 19
day of May, 2005.



Randy Stone
City Attorney
City of Burley, Idaho

CERTIFICATE OF AUTHORITY

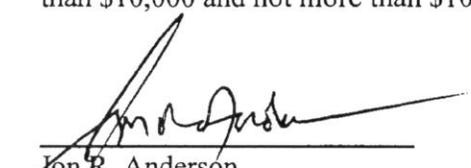
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Jon R. Anderson
Mayor
City of Burley

DATE: May 3, 2005