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 AGREEMENT is entered into this 8th day of July, 2004, 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, Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development project, or separable element thereof, unless the project is publicly owned;

WHEREAS, the Burley Wasterwater Capital Improvements Program in the City of Burley, Cassia County, Idaho(hereinafter the "Project", as defined in Article I.A. of this Agreement) has been identified as a project of the type authorized by Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for design and construction of the Project;

WHEREAS, Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, specifies the cost-sharing requirements applicable to the Project and provides that total project costs shall be shared 75 percent Federal and 25 percent Non-Federal;

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WHEREAS, Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, the Secretary of the Army is authorized to provide assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, to the Non-Federal Sponsor and to afford credit for the reasonable costs of design work completed by the non-Federal interest before entering into a written agreement with the Secretary;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2000 (Public Law 106-60), provides that credits and reimbursements afforded under certain general authorities and under project specific authority, such as Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, shall not exceed $10,000,000 per project in each fiscal year, nor shall they exceed $50,000,000 for all applicable projects in each fiscal year; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the design and construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the design and construction of the Burley Wastewater Treatment Plant Administration Building in Burley, Cassia County, Idaho as generally described in the Burley Wastewater Capital Improvements Program Scope of Work, dated June 21, 2004.

B. The term "total project costs" shall mean all costs incurred by, or on behalf of, the Non-Federal Sponsor and by the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to project design and construction. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the costs of project design and construction work; the costs of review and technical assistance incurred by the Government in accordance with Article II.D.of this Agreement; the costs of inspection and technical assistance incurred by the Government in accordance with Article II.I of this Agreement; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (including permit costs) not to exceed 25

percent of total project costs, as determined by the Government in accordance with Article IV of this Agreement; the costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; applicable costs of audit in accordance with Article XI of this Agreement; and other costs incurred by the Government pursuant to this Agreement. The term does not include any costs of activities performed under any other agreement for the Project; any costs for operation, maintenance, repair, rehabilitation, or replacement; any costs due to betterments; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any actual construction costs incurred prior to the effective date of this Agreement; any costs of dispute resolution under Article VIII of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "project design work" shall mean the work performed by, or on behalf of, the Non-Federal Sponsor for design directly related to the Project, including but not necessarily limited to, the reasonable costs of design work incurred prior to the effective date of this Agreement and which have not been included in costs under any other agreement for the Project. The term includes, but is not necessarily limited to, concept design; report writing; detailed design; preparation of plans and specifications; design analysis; quantity/cost estimates; obtaining required local, state and Federal permits; performance and documentation of environmental investigations; performance and documentation of hazardous substances investigations in accordance with Article XVI.A. of this Agreement; performance of historical preservation investigations in accordance with Article XIX of this Agreement; engineering and design during construction; and other design services and in-kind design work.

D. The term "project design and construction work" shall mean the work performed by, or on behalf of, the Non-Federal Sponsor for design and construction directly related to the Project incurred subsequent to the effective date of this Agreement. The term includes, but is not necessarily limited to, project design work as defined in paragraph C. of this Article; actual construction, including settlement of or paying awards for contract disputes; supervision and administration; and other construction services and in-kind construction work.

E. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

F. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (including any bridge thereof) when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

G. The term "period of design and construction" shall mean the time period from execution of this Agreement until completion of Project construction, as verified by Government inspection in accordance with Article II.I. of this Agreement.

H. The term "fiscal year" shall mean one fiscal year of the Government. The

Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that the Project Coordination Team determines is suitable for the Non-Federal Sponsor to operate and maintain in advance of completion of construction of the entire Project. For a portion of the project to be suitable, the Project Coordination Team must determine that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "proper invoice" shall mean a request for reimbursement by the Non-Federal Sponsor in which the Non-Federal Sponsor certifies that payments have been made in the amount requested to, or bills in the amount requested have been received from, contractors, suppliers or employees for performance of work in accordance with this Agreement and provides evidence of payment made or obligation incurred by, or on behalf of, the Non-Federal Sponsor as may be required by the Government.

L. The term "Federal program funds" shall mean funds or grants provided directly to the Non-Federal Sponsor by a Federal agency, other than the Department of the Army, and any non-Federal matching share required therefor.

ARTICLE II - OBLIGATIONS OF THE NON-FEDERAL SPONSOR AND THE GOVERNMENT

A. Using its funds and the funds to be reimbursed by the Government, the Non-Federal Sponsor shall expeditiously design and construct the Project. The Non-Federal Sponsor assumes full and exclusive responsibility for design and construction of the Project.

1. The Government shall be afforded the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. In the event that the Non-Federal Sponsor proposes to do work with its own forces, the Government shall be afforded the opportunity to review and approve the plan of work and materials to be incorporated into the work. In addition, to the maximum extent practicable, the Government shall be afforded the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Government with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the

Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government made as a result of its review, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all design and construction work on the Project (whether the work is performed under contract or by Non-Federal Sponsor personnel), shall be exclusively within the control of the Non-Federal Sponsor.

2. The Non-Federal Sponsor shall obtain all necessary permits and licenses and comply with all applicable laws, regulations, ordinances and other rules of the United States of America, of the state or political subdivisions thereof wherein the work is performed, or of any other duly constituted public authority, including the laws and regulations specified in Article XII of this Agreement and where applicable shall include appropriate provisions in its contracts for design and construction of the Project.

B. In the event that the Non-Federal Sponsor elects to design and construct betterments during the period of design and construction, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to betterments, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

C. The Non-Federal Sponsor shall require the recipient of any contracts for design to provide in-progress review of the design at the 30% and 100% stages of completion. The Government's representative or his designee may participate in the review of the design at each stage of completion. Upon completion of the design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

D. The Government may perform periodic reviews to verify the progress of design, shall perform a final review to verify the completion of design, and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the period of design and construction. Any costs incurred by the Government in furtherance of this paragraph shall be included in total project costs and shared in accordance with the provisions of this Agreement.

E. During the period of design and construction, using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, the Environmental Assessment and either an Environmental Impact Statement or a Finding of No Significant Impact necessary to inform the public regarding the environmental impacts of the Project in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). Compliance with NEPA is a prerequisite to undertaking construction of the Project. Any costs incurred by the Government relating to compliance with this paragraph shall be included in total project costs and shared in accordance with the provisions of this Agreement.

F. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that are necessary for the construction, operation, maintenance of the Project.

G. The Non-Federal Sponsor may request the Government to acquire lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the acquisition of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response of hazardous substances in accordance with Article XVI of this Agreement.

H. During the period of design and construction, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual. The Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace any functional portion of the Project and, upon completion of construction and final inspection by the Government in accordance with paragraph I. of this Article, the entire completed Project, at no cost to the Government, in a manner compatible with the Project's design and its Operation, Maintenance, Repair, Rehabilitation and Replacement Manual, and in accordance with applicable Federal and State laws as provided in Article XII of this Agreement. The failure of the Non-Federal Sponsor to prepare an Operation, Maintenance, Repair, Rehabilitation and Replacement Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the completed project, or any functional portion thereof, in accordance with the provisions of this Agreement.

I. The Government may perform periodic inspections to verify the progress of construction, shall perform a final inspection to verify the completion of construction of the entire Project or functional portion of the Project, and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the period of design and construction. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for the purpose of performing such inspections. Any costs incurred by the Government in furtherance of this paragraph shall be included in total project costs and shared in accordance with the provisions of this Agreement.

J. Upon request by the Non-Federal Sponsor, the Government shall include in total project costs those reasonable costs incurred by, or on behalf of, the Non-Federal Sponsor for project design work that was completed by, or on behalf of, the Non-Federal Sponsor prior to the effective date of this Agreement and which have not been included in costs under any other agreement for the Project. Such costs shall be limited to the reasonable, allowable, allocable actual cost of project design work as determined by the District Engineer. Where the Non-Federal Sponsor's cost for completed project design work is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs. On the effective date of this Agreement, the amount of costs for project design work completed prior to the effective date of this Agreement to be included in total project costs is estimated to be $200,000. This amount is an estimate subject to adjustment by the Government in its sole discretion. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in total project costs for this project design work.

K. Subject to Article VII of this Agreement, the Government in accordance with Article VI.B. of this Agreement, shall contribute 75 percent of total project costs by, in part, reimbursing the Non-Federal Sponsor for total project costs that are incurred by, or on behalf of, the Non-Federal Sponsor, including such total project costs that were paid with grants from State or local agencies.

L. Upon completion of the period of design and construction or termination of this Agreement, the Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Government and the Non-Federal Sponsor toward total project costs and to determine whether the Government and the Non-Federal Sponsor have met their obligations under paragraph K. of this Article.

M. The Non-Federal Sponsor shall establish such legal and institutional structures as are necessary to ensure the effective long-term operation of the Project.

N. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan, including appropriate engineering plans and specifications.

O. No construction by the Non-Federal Sponsor shall be undertaken, and no reimbursement shall be afforded for any such construction, until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. Prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall acquire all such lands, easements, and rights-of-way necessary for that contract and certify in writing to the Government that said interests have been acquired.

B. The Non-Federal Sponsor and the Government jointly shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. Prior to the issuance of any solicitation for construction where the disposal of dredged or excavated material associated with the construction is anticipated, the Non-Federal Sponsor shall provide the Government with copies of all permits obtained for the disposal of dredged or excavated materials and with plans and specifications of such improvements in detail sufficient for the Government to review and comment in accordance with Article II.A.1. of this Agreement.

C. The Non-Federal Sponsor and the Government jointly shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the disposal of dredged or excavated material. Prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall perform or ensure the performance of all such relocations necessary for that contract. The Non-Federal Sponsor shall be responsible for preparing or ensuring the preparation of plans and specifications for all relocations determined necessary.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution and shall include such value in total project costs.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Government shall include in total project costs the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government and the Non-Federal Sponsor jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III of this Agreement and the value of the relocations that the Government and the Non-Federal Sponsor jointly determine must be performed by the Non-Federal Sponsor, or for which it must ensure performance, pursuant to Article III of this Agreement, not to exceed 25 percent of total project costs. However, the Government shall not include in total project costs the value of any lands, easements, rights-of-way, relocations, or borrow or dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Government also shall not include in total project costs the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that are provided using Federal program funds unless the Federal agency providing the Federal program funds verifies in writing that reimbursement for the value of such items is expressly authorized by statute.

B. The value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the appraised fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the Project or, if the Non-Federal Sponsor performs the construction with its own labor, the date that the Non-Federal Sponsor begins construction of the Project. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be the appraised fair market value as determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. or paragraph B.5. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall

be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not already approved by the Government in writing.

a. If the Government already has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 calendar day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 calendar day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental and Permit Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article XI of this Agreement to determine reasonableness, allowability, and allocability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement. In addition, the Government shall include in total project costs all reasonable costs incurred by the Non-Federal Sponsor, as part of project design and construction work, that are associated with obtaining permits necessary for the construction, operation, and maintenance of the Project on publicly owned or controlled land subject to the 25 percent limitation contained in Article I.B. of this Agreement and subject to an audit in accordance with Article XI of this Agreement to determine reasonableness, allowability, and allocability of costs.

5. Waiver of Appraisal. Except as required by paragraph B.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for inclusion in total project costs if it determines that an appraisal is unnecessary because the valuation problem is uncomplicated and that the estimated fair market value of the real property interest is $5,000.00 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of $5,000.00.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Idaho would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article XI of this Agreement to determine reasonableness, allowability, and allocability of costs.

4. Inclusion of the value of relocations in total project costs is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. The value of improvements made to lands, easements, and, rights-of-way for the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article XI of this Agreement to determine reasonableness, allowability, and allocability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of design and construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of design and construction, the Project Coordination Team shall generally oversee the Project including issues related to design; including scheduling of reports and work products; completion of all necessary NEPA coordination; development of

plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations and for the construction portion of the non-Federal project design and construction work; the Government's cost projections; final inspection of the construction or functional portions of the Project; preparation of the proposed Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the Project; and other related matters.

D. The Project Coordination Team may make recommendations that it deems warranted to the Non-Federal Sponsor on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations. Except as otherwise provided in this Agreement, the Non-Federal Sponsor may not reject or modify the Project Coordination Team's recommendations when the purpose of such recommendations is to ensure that the Project complies with Federal, State, or local laws or regulations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs, subject to Article VII of this Agreement, and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. Based on data supplied by the Non-Federal Sponsor and the Government, the Government shall maintain current records of costs incurred by the parties, reimbursements made to the Non-Federal Sponsor, and current projections of total project costs. By August, 2004 and at least quarterly thereafter during the period of design and construction, the Government shall provide the Non-Federal Sponsor with a report setting forth costs incurred to date, each party's share of costs incurred to date, costs incurred by or on behalf of each party to date, reimbursements made to date in accordance with paragraph B.2. of this Article, and current projections of total project costs, of each party's share of total project costs, of total project costs incurred by or on behalf of each party, of total reimbursements, and of reimbursements in the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be $1,515,000, the Government's share of total project costs is projected to be $1,136,250, the Non-Federal Sponsor's share of total project costs is projected to be $378,750, total project costs to be incurred by the Government are projected to be $70,000, total project costs to be incurred by, or on behalf of, the Non-Federal Sponsor are projected to be $1,445,000, and total

reimbursements in accordance with paragraph B.2. of this Article are projected to be $1,066,250. 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.

B. In accordance with the provisions of this paragraph, the Government shall contribute its share of total project costs required under Article II.K. of this Agreement as it incurs such costs or as such costs incurred by the Non-Federal Sponsor are determined.

1. Except as otherwise provided in Article IV of this Agreement, periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a proper invoice for costs that it has incurred, or has been incurred on its behalf, and that are not included in a previous proper invoice. Each proper invoice shall identify those costs that were paid with, or will be paid with, Federal program funds and shall provide evidence of payment, obligation to contractors, and costs incurred by the Non-Federal Sponsor's own forces as may be required by the Government. In the event the Non-Federal Sponsor's cost for project design work is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs prior to such costs being included in a proper invoice.

2. Not later than 14 calendar days after receipt of each proper invoice, the Government, in accordance with this paragraph, shall review the costs identified therein and, subject to Article VII of this Agreement, shall include such costs, in whole or in part, in total project costs. Thereupon, the Government shall determine costs incurred to date (including the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas determined in accordance with Article IV of this Agreement), each party's share of costs incurred to date, costs incurred by or on behalf of each party to date, and reimbursements previously made to date in accordance with this paragraph. To the extent that the Government determines that costs incurred by the Government to date plus reimbursements the Government previously has made to date in accordance with this paragraph are less than its required share of costs incurred to date, the Government, subject to Article VII of this Agreement, shall partially reimburse those total project costs that were incurred by the Non-Federal Sponsor without using Federal program funds and that were not previously reimbursed by the Government.

3. Upon determining in accordance with paragraph B.2. of this Article that reimbursement is due the Non-Federal Sponsor, the Government, subject to Article VII of this Agreement, shall make such payment within 14 calendar days. An interest penalty shall be credited to the Non-Federal Sponsor's account automatically by the designated payment office, without request from the Non-Federal Sponsor, if payment is not made by the due date. The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate" and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the

proper invoice payment amount approved by the Government and shall be compounded in 30 calendar day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30 calendar day period shall be added to the approved proper invoice payment amount and be subject to interest penalties if not paid in the succeeding 30 calendar day period.

C. In advance of the Government incurring any financial obligation associated with services under Article II.G. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the amount of funds required to perform such services. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such services by delivering a check payable to "FAO, USAED, WALLA WALLA" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such services as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through either of the payment mechanisms specified above.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, the Government's and the Non-Federal Sponsor's total contribution provided thereto (including reimbursements), and the Government's and the Non-Federal Sponsor's required share thereof.

1. In the event the final accounting shows that the total contribution provided by the Government is less than its required share of total project costs, the Government shall, subject to Article VII of this Agreement, no later than 90 calendar days after completion of final accounting, make a cash payment to the Non-Federal Sponsor of whatever sum is required to meet the Government's required share of total project costs.

2. In the event the final accounting shows that the total contribution provided by the Government exceeds its required share of total project costs, the Non-Federal Sponsor shall refund the excess to the Government no later than 90 calendar days after written notice by the Government that the final accounting is complete by delivering a check payable to "FAO, USAED, WALLA WALLA" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event existing funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such funds as are necessary to make the refund. In the event that such funds are not made available within a reasonable amount of time, the Government may apply any amounts owed toward the

Federal share of costs under any subsequent agreement with the Non-Federal Sponsor for any other project or separable element under the Idaho portion of the Section 595 Program and may use any other procedures permitted by law. The Non-Federal Sponsor shall be liable for interest in accordance with Article XV.E. of this Agreement to the extent that such refund takes longer than 90 calendar days after the final accounting is complete.

ARTICLE VII - LIMITATIONS ON TOTAL PROJECT COSTS AND REIMBURSEMENTS

A. Inclusion of costs in total project costs shall be subject to an audit pursuant to Article XI.C. of this Agreement to determine the reasonableness, allowability and allocability of such costs.

B. Costs incurred by, or on behalf of, the Non-Federal Sponsor using Federal program funds shall not be included in total project costs and shall not be shared in accordance with the provisions of this Agreement unless the Federal agency providing the Federal program funds verifies in writing that such expenditure of funds is expressly authorized by statute.

C. Except as provided in Article VI.B. of this Agreement, total project costs incurred by, or on behalf of, the Non-Federal Sponsor shall not be subject to interest charges and shall not be adjusted to reflect changes in price levels since the time that the costs were incurred.

D. Crediting and/or reimbursement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting and/or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. As of the effective date of this Agreement, $4,450,000 of Federal funds have been appropriated for the Idaho portion of the Section 595 Program, of which $2,000,000 appropriated for the Idaho portion of the Section 595 Program is currently projected to be available for the Project. The Government makes no commitment to seek additional Federal funds for the Idaho portion of the Section 595 Program. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project, when added to the costs incurred by the Government for other projects of the Idaho portion of the Section 595 Program, shall not exceed the total amount of Federal funds that have been appropriated and hereafter may be appropriated for the Idaho portion of the Section 595 Program. In the event that the Federal share of a forthcoming financial obligation for total project costs would be limited by this paragraph, the parties shall proceed in accordance with Article XV.B. of this Agreement.

F. Reimbursement by the Government pursuant to this Agreement, in concert with reimbursements by the Government pursuant to agreements for other projects authorized by Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, shall be subject to the applicable limitations contained in Section 102 of the Energy and Water Development Appropriations Act, 2000 (Public Law 106-60).

ARTICLE VIII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE IX - OPERATION, MAINTENANCE, REPAIR, REHABILITATION AND REPLACEMENT (OMRR&R)

Upon completion of construction and final inspection by the Government in accordance with Article II.I. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's design and its Operation, Maintenance, Repair, Rehabilitation and Replacement Manual, and in accordance with applicable Federal and State laws as provided in Article XII of this Agreement. As between the Government and the Non-Federal Sponsor, the Government shall have no responsibility to operate, maintain, repair, rehabilitate, or replace the Project or functional portion of the Project.

ARTICLE X – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance, repair, rehabilitation and replacement of the Project, and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE XI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence pertaining to design and construction in accordance with these procedures and for a minimum of three years after the period of design and construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs, subject to Article VII of this Agreement, and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total projects costs and shared in accordance with the provisions of this Agreement.

ARTICLE XII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all

applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.A., II.C., II.E., II.F., II.G., and XIX.F. of this Agreement, the Assistant Secretary of the Army (Civil Works) may terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for total project costs for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and within 60 calendar days thereafter the Non-Federal Sponsor without penalty shall terminate this Agreement or suspend future performance under this Agreement. In the event that the Non-Federal Sponsor elects to suspend future performance under this Agreement in accordance with this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

C. If after completion of the design phase of the Project both parties mutually agree in writing not to proceed with the construction phase of the Project, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XVI of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XVI of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor to the Government shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XVI - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Government, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government determine, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the Government provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by, or on behalf of, the Non-Federal Sponsor and by the Government for such investigations for hazardous substances shall be included in total project costs, subject to Article VII of this Agreement, and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article XI of this Agreement to determine reasonableness, allowability, and allocability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government determine, pursuant to Article III of this Agreement, to be required for the construction, operation, and

maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government determine, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate construction or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor 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 may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:
City of Burley
Attn: City Administrator
P.O. Box 1090
Burley, Idaho

If to the Government:
U.S. Army Corps of Engineers
Walla Walla District Attn: CENWW-PM
201 North 3rd Avenue
Walla Walla, WA 99362

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIX - HISTORIC PRESERVATION

A. The Government shall be responsible for compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.) for all lands required for, or affected by, the Undertaking, as defined by 16 U.S.C. 470w(7). Prior to initiation of construction, the Non-Federal Sponsor shall perform all necessary cultural resource studies, and the Government shall make all determinations and consultation in a manner consistent with 36 Code of Federal Regulations (CFR) Part 800, "Protection of Historic Properties", the Secretary of the Interior's Standards and Guidelines for Identification (48 Federal Register 44720-23), the National Park Service's publications, The Archaeological Survey: Methods and Uses (1978) and Identification of Historic Properties (1988), and the applicable guidelines of the State Historic Preservation

Officer (hereinafter the "SHPO"). The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and/or historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards (48 Federal Register 44738-39). The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies. In the event that significant archeological or historical properties will be adversely affected, the Non-Federal Sponsor shall formulate a mitigation plan in consultation with the Government and any other parties involved in the development of a Section 106 Memorandum of Agreement (hereinafter the "MOA"). The Non-Federal Sponsor shall be responsible for implementing the mitigation contained in a signed MOA prior to the initiation of any construction activities affecting historic properties.

B. The Non-Federal Sponsor's responsibilities under this Article are limited to those historic properties within the Undertaking's area of potential effect, as defined by 36 CFR 800.16(d). Any betterments not affecting historic properties and constructed by the Non-Federal Sponsor without Federal funds are not considered to be subject to the provisions of this Article.

C. The Non-Federal Sponsor shall include provisions in all construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the cessation of work in the immediate area of a discovered cultural resource until the situation is properly evaluated, the immediate verbal and written notification of the Non-Federal Sponsor and Government, and consultation between the Non-Federal Sponsor, the Government, and the SHPO on appropriate measures to evaluate and treat the resource. Where the Non-Federal Sponsor elects to perform the construction work with its own forces, the same procedures shall be followed.

D. The costs of identification, survey and evaluation of historic properties shall be included in total project costs, subject to Article VII of this Agreement, and shared in accordance with the provisions of this Agreement.

E. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs up to the statutory limit of one percent of the total amount the Government is authorized to expend for the Project.

F. The Government shall not incur costs for archeological data recovery that exceed the statutory one percent limit specified in paragraph E. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived (and the Secretary of the Interior has concurred in the waiver) that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. 469c-2(3)). Any costs of archeological data recovery that exceed the one percent limit shall be included in total project costs, subject to Article VII of this Agreement, and shared in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

BY: _____
Edward J. Kertis, Jr.
Lieutenant Colonel, Corps of Engineers
District Commander

DATE: 8 July 07

CITY OF BURLEY

BY: _____
Jon R. Anderson
Mayor
City of Burley

DATE: June 28, 2007

CERTIFICATE OF AUTHORITY

I, R Stone, do hereby certify that I am the principal legal officer of the City of Burley, Idaho that the City of Burley, Idaho is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement 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 this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement 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 28th day of June.

Randy Stone
City Attorney
City of Burley, Idaho

CERTIFICATION REGARDING LOBBYING

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: June 28, 2004

BURLEY WASTEWATER CAPITAL IMPROVEMENTS PROGRAM
CITY OF BURLEY, CASSIA COUNTY, IDAHO
SECTION 595
SCOPE OF WORK

June 21, 2004

PURPOSE

This Scope of Work identifies and describes design and construction elements of the Burley Wastewater Capital Improvements Program, City of Burley, Cassia County, Idaho being considered for implementation under the authority of Section 595 of the Water Resource Development Act of 1999 (Public Law 106-53) as amended by Section 126 of Public Law 108-7.

BACKGROUND AND HISTORY

Authority

The Water Resource Development Act of 1999 authorized the Corps of Engineers to participate in environmental infrastructure projects in rural Nevada and Montana. Public Law 108-7 amended this to include Idaho. In the Energy and Water Appropriations Act of 2004 (Public Law 108-137), Congress included funds of $4,450,000 for projects within Idaho. The accompanying congressional conference language directed $2,000,000 to be used by the City of Burley, Idaho in FY2004.

Wastewater Capital Improvements Program

The City of Burley is already in the process of making many needed improvements to its wastewater system to meet increasingly stringent National Pollutant Discharge Elimination System (NPDES) discharge requirements and to provide additional capacity to accommodate growth. Recent changes to the discharge requirements include stringent phosphorus limits driven by Total Maximum Daily Loads (TMDLs) and ammonia limits driven by aquatic toxicity. The City also desires to improve storm water detention and treatment, to extend wastewater service to areas with existing septic tank problems, and to implement wastewater reuse. In the near future, the City will be faced with implementing Capacity, Management of Operation and Maintenance program, (CMOM) requirements. The CMOM requirements will include capital asset management requirements. A geographical information system (GIS) database will be needed as part of the capital assets management effort and will facilitate other wastewater system projects.

The City has identified several needed wastewater system improvement projects to accomplish these general goals. The capital improvements program for the wastewater system includes several program elements, including but not limited to the following:

- Burley Wastewater Administration Building Project
- Burley Wastewater Treatment Plant (WWTP) Upgrade Project
- Western Conveyance System Project
- Modifications of Existing Wastewater Lagoons for Multiple Uses
- Burley WWTP Effluent Line and Outfall Replacement Project
- Addition of Reuse Facilities to the Upgraded Burley WWTP

- Wastewater System portions of City-wide GIS Project

The design phase has not begun on some of these projects. Others are nearing the construction phase.

A facilities planning study has been completed for the following elements:

- administration building
- upgrades to the wastewater treatment plant including:
    - new influent pumping and headworks facilities
    - secondary and tertiary treatment facilities
    - new disinfection facilities
    - biosolids treatment facilities

Nominal design average flow capacity is 5 million gallons per day.
The City is the process of procuring some major equipment systems.
Idaho Department of Environmental Quality has issued a Finding of No Significant Impact for these elements.

Several of these projects are pending funding. The current scope of work for this Project Cooperation Agreement (PCA) addresses the following near term project, design and construction of the Administration Building, which is a separable element of the entire wastewater treatment plant upgrade. Additional projects will be identified based on the availability of funding.

PROPOSED PROJECT

Section 595 allows credit for reasonable costs of design work associated with the project by the non-Federal sponsor before entering into a cost sharing agreement. At this time, design of the Burley Wastewater Treatment Plant Administration Building is underway. The design cost is estimated at $200,000 ($140,000 of which was included in scope of work for the WWTP Upgrade project, the balance of which was additional effort to create separate bid documents for the Administration Building and accelerate its design.) The most recent construction cost estimate is $1,100,000, including related utility relocation work. The City has prepared design documents for construction of the administration building and is prepared to bid in June 2004 and award in July 2004 for the construction that includes a lab, training center, offices and support facilities for plant personnel. The Corps has reviewed the 90% review documents.

As required by Section 595 guidance, the Corps will also complete a Finding of No Significant Impact (FONSI) using the existing Facilities Planning Study, Environmental Assessment/Environmental Inventory Document, and Finding of No Significant Impact prepared by Idaho Department of Environmental Quality as the basis.

Using its funds and the funds to be reimbursed by the Corps, the City will assume responsibility for all procurement and construction activities. The estimated construction period is six months. The City may request construction review of the administration facility. The City and the Corps have agreed to budget up to six 3-day site visits during construction.

PROPOSED LAND ACQUISITION

None required. The City currently owns all lands required for the project footprint and they are not seeking LERRD credits towards the non-federal match. The land has already been counted as match towards an EPA grant.

FEDERAL REVIEW AND COORDINATION

Project costs will include all Federal efforts to assist the City in completing this project and verifying compliance with all applicable Federal laws and regulations. Federal involvement for this project is estimated to be $70,000.

PROJECT COSTS AND COST SHARING

Project costs are defined below. With the limitation of Federal funding for FY 2004 ($2,000,000) and Section 595 authorization defining cost sharing as 75% Federal and 25% non-Federal sponsor, the total project cost for FY2004 and FY2005 for the purposes of the Project Cooperation Agreement is $1,515,000.

Sponsor Design cost – admin bldg and related	200,000
Sponsor construction cost	1,100,000
Sponsor Construction management	145,000
Federal Review and Coordination	70,000
TOTAL	1,515,000

COST ALLOCATION

Section 595 authorizes Federal reimbursement for costs associated with design and construction as well as providing credit and grants to the Non-Federal sponsor. The City of Burley is proposing to fund its project on a 75% Federal, 25% City total project cost sharing basis. The City's share of the total project cost is estimated to be $378,750.

Total Project Cost (TPC)	$1,515,000
Government share (75%)	$1,136,250
Non-Federal sponsor share (25%)	$ 378,750
Costs incurred by Government	$ 70,000
Costs incurred by Sponsor (TPC less costs incurred by Govt)	$1,445,000
Total reimbursements to Sponsor (incurred costs less sponsor share)	$1,066,250

PROJECT SCHEDULE

The City and the Corps of Engineers must sign a Project Cooperation Agreement (PCA) in order to assure reimbursement on design and construction costs. The City and Corps will use the model PCA for Section 595 Design and Construction projects. The combined design and construction agreement may be executed prior to the Corps completing NEPA compliance, but credit for construction may not begin until this requirement is satisfied.

The City has provided proof of ownership of the administration building footprint and a statement of financial capability. Prior to the PCA being signed, the Corps will review the proof of ownership and prepare a Financial Capability Assessment. The Corps has provided the City with a draft PCA for review by the City including the City Attorney. The Corps will provide the City with the final PCA for signature. The PCA is not considered "executed" until signed by the Corps.

The PCA is scheduled to be signed in late June 2004 and the anticipated completion for the FONSI is late June 2004.