AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF SODA SPRINGS, IDAHO
FOR
DESIGN
ASSISTANCE
FOR THE
WASTEWATER SYSTEM EVALUATION AND TREATMENT UPGRADE

THIS AGREEMENT is entered into this 17th day of September, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Walla Walla District and City of Soda Springs, Idaho (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, 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 (hereinafter "Section 595");

WHEREAS, Section 595 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

WHEREAS, Section 595 provides that $55,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Idaho pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, Walla Walla District (hereinafter the "District Engineer") has determined that the Wastewater System Evaluation and Treatment Upgrade in the City of Soda Springs, Caribou County, Idaho (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

WHEREAS, Section 595 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* including that the Secretary of the Army shall afford credit for the reasonable costs of design

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, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed $100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design assistance for the *Project*;

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 *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

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

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the design of the Wastewater System Evaluation and Treatment Upgrade in Soda Springs, Idaho as generally described in the Wastewater System Evaluation and Treatment Upgrade scope of work date 14 August, 2009 approved by the Commander, Walla Walla District on 17 Sep, 2009.

B. The term "*total design eosts*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article VII.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.J. of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. of this Agreement; the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional

structures in accordance with Article II.G. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article VII.B. and Article VII.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs of *betterments*; any interest penalty paid in accordance with Article IV.B.4. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs (other than audit) resulting from financial obligations after the *period of design*; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design*" shall mean the time from the effective date of this Agreement to the date that design of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.D. or Article X of this Agreement, whichever is earlier.

D. The term "*betterment*" shall mean a difference in the design of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

E. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

F. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

G. The term "*sufficient invoice*" shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

H. The term "*Section 595 Program Limit for Idaho*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Idaho pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is $55,000,000.

I. The term "*Section 102 Limit*" shall mean the annual limit on credits and

reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

J. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

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

A. Using its funds, the Non-Federal Sponsor expeditiously shall design the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969.

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article VIII of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, 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, but the contents of solicitations, award of contracts or commencement of design using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all design on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

B. The Government shall determine and include in *total design costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design of the *Project*, subject to the conditions and limitations of this paragraph.

1. All design work performed by the Non-Federal Sponsor for the *Project* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's costs for design 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.

3. The Non-Federal Sponsor's costs for design that may be eligible for inclusion in *total design costs* shall be subject to an audit in accordance with Article VII.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for design that may be eligible for inclusion in *total design costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total design costs*.

5. The Government shall not include in *total design costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

C. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article IV.B. of this Agreement, the amount necessary so that the Federal contribution towards *total design costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the *Section 595 Program Limit for Idaho*.

D. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, $31,206,000 of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section

595 Program in Idaho of which $490,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in Idaho or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total design costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been 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 and the parties shall proceed in accordance with Article X.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph C. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in Idaho has reached the *Section 595 Program Limit for Idaho*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 595 Program Limit for Idaho* will not be sufficient to meet the Federal share of *total design costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 595 Program Limit for Idaho*, the parties shall terminate this Agreement and proceed in accordance with Article X of this Agreement.

E. Upon conclusion of the *period of design*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

F. 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. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, and any other matters related to design of the *Project* in accordance with this Agreement.

G. The Non-Federal Sponsor shall identify such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures. The

Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total design costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

H. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

I. In the event that the Non-Federal Sponsor elects to include *betterments* in the design of the *Project* during the *period of design*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments* and shall pay all such costs without reimbursement by the Government.

J. The Government shall determine and include in *total design costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. 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 design costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement 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.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total design costs* shall be subject to an audit in accordance with Article VII.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total design costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total design costs*.

5. The Government shall not include in *total design costs* any costs for *pre-Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

ARTICLE III - DESIGN 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 Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the *period of design*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Design Coordination Team.

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

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; reports and work products; plans and specifications; scheduling; anticipated real property and relocation requirements; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of design of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Design Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to design of the *Project* that the Design 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 Design Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design of the *Project*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal

Sponsor current projections of costs, financial obligations, contributions provided by the parties, and the costs included in *total design costs* for the *pre-Agreement design work* determined in accordance with Article II.J. of this Agreement.

1. As of the effective date of this Agreement, *total design costs* are projected to be $997,000; the Government's share of *total design costs* is projected to be $747,750; the Non-Federal Sponsor's share of *total design costs* is projected to be $249,250; *total design costs* to be incurred by the Government are projected to be $17,000; *total design costs* to be incurred by the Non-Federal Sponsor are projected to be $980,000; the costs included in *total design costs* for the *pre-Agreement design work* determined in accordance with Article II.J. of this Agreement are projected to be $0; and total reimbursements in accordance with paragraph B.2. of this Article are projected to be $730,750. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By September 30, 2009 and by each quarterly anniversary thereof until the conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total design costs*; the Government's share of *total design costs*; the Non-Federal Sponsor's share of *total design costs*; *total design costs* incurred by the Government; *total design costs* incurred by the Non-Federal Sponsor; the costs included in *total design costs* for the *pre-Agreement design work* determined in accordance with Article II.J. of this Agreement; and total reimbursements paid to the Non-Federal Sponsor.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.C. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total design costs*, subject to the limitations in Article II.B. of this Agreement; (b) the total costs incurred by the parties to date; (c) each party's share of *total design costs* incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the "payment amount") if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the *Section 595 Program Limit for Idaho* or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the "payment period"), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor's account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, 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 first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government's future performance or during suspension of only the Government's future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article X of this Agreement.

C. Upon conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total design costs*. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required share of *total design costs* exceeds the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the *Section 595 Program Limit for Idaho* and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total

contributions provided by the Government for *total design costs* exceed the Government's total required share thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, WALLA WALLA DISTRICT & G4" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

ARTICLE V - 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. Each party shall pay an equal share 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 VI – HOLD AND SAVE

Subject to the provisions of Article XIV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - 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, or 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, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. 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, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 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 design costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 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 Amendments of 1996. 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 design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall 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; and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE IX - 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 the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this

Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.D.2. 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 design costs* 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.

C. In the event that this Agreement is terminated pursuant to this Article or Article II.D. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article IV.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design of the *Project*, at no cost to the Government.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.D. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor 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 XI - 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 delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:
City of Soda Springs
9 West 2nd South
Soda Springs, Idaho 83276

If to the Government:
U.S. Army Corps of Engineers
Walla Walla District, ATTN: CENWW-PM
201 N. 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 XII - 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 XIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XIV - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the City Council of the City of Soda Springs of the State of Idaho, where creating such an obligation would be inconsistent with Section 50-1006 of the Idaho Code of the State of Idaho.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to 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 CITY OF SODA SPRINGS

BY: _____
MICHAEL J. FARRELL
Lieutenant Colonel, Corps of Engineers
District Engineer

DATE: 17 SEP 09

BY: _____
KIRK HANSEN
Mayor
City of Soda Springs, Idaho

DATE: 9-17-09

CERTIFICATE OF AUTHORITY

I Clyde G. Nelson, do hereby certify that I am the principal legal officer of the City of Soda Springs, Idaho, that the City of Soda Springs, 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 Soda Springs, Idaho in connection with the Soda Springs Wastewater System Evaluation and Treatment Upgrade, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Soda Springs, Idaho have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 17th day of September, 2009.

Clyde G. Nelson
City Attorney

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.

Kirk Hansen

KIRK HANSEN
Mayor
City of Soda Springs, Idaho

DATE: 9-17-09

NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS

I, Tausha Vorwaller, do hereby certify that I am the City Clerk/Treasurer of the City of Soda Springs, Idaho (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the City of Soda Springs, Idaho Wastewater System Evaluation and Treatment Upgrade project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Agreement between the Department of the Army and the City of Soda Springs, Idaho for Design Assistance for the City of Soda Springs, Idaho Wastewater System Evaluation and Treatment Upgrade Project.

IN WITNESS WHEREOF, I have made and executed this certification this 17TH day of Sept., 2009.

BY: Tausha Vorwaller

TITLE: Clerk-Treasurer

DATE: 9-17-09