# JOINT POWERS AGREEMENT
# OF THE
# EASTERN IDAHO REGIONAL WASTEWATER AUTHORITY
# FOR THE
# EASTERN IDAHO REGIONAL WASTEWATER FACILITIES

AGREEMENT, made this 5th day of October, 2004, by and among the CITY OF AMMON, an Idaho Municipal corporation located in Bonneville County, Idaho (hereinafter "Ammon"); BINGHAM COUNTY, a political subdivision of the State of Idaho (hereinafter "Bingham"); BONNEVILLE COUNTY, a political subdivision of the State of Idaho (hereinafter "Bonneville"); and the CITY OF SHELLEY, an Idaho municipal corporation located in Bingham County, Idaho (hereinafter "Shelley") who are referred to herein individually as "Entity" and collectively as "Entities".

WHEREAS, Ammon, and Shelley are municipal corporations of the State of Idaho and are authorized by law to provide sanitary sewer collection, transmission, treatment, and disposal services to their inhabitants; and

WHEREAS, Bingham and Bonneville are Idaho counties and are authorized by Section 31-877, Idaho Code, to provide necessary water and sewer service to any part of the county which does not receive water and sewer service and, to that end, are granted the same authority as is granted by law to water and sewer districts and to municipalities; and

WHEREAS, The parties to this Agreement have determined that there is an immediate and pressing need to provide a regional sewage treatment and disposal facility to serve the needs of the entire region now served by the parties hereto; and

WHEREAS, Sections 67-2327 through 67-2333, inclusive, Idaho Code, expressly authorize any public agency to exercise jointly any power, privilege or authority with any other public agency having the same powers, privileges, or authority; and

WHEREAS, the parties to the Agreement have determined that it is in the best interests of the parties and their inhabitants to provide for the creation of a regional wastewater authority for the joint provision of a regional sewage treatment and disposal facility along with suitable transmission mains and lift stations to serve the needs of the area represented by the parties within the bounds of a reasonable service area, and

WHEREAS, The parties to this Agreement contemplate providing sewer service to specific Entity Service Areas within the jurisdiction of each Entity as defined herein (and the possible expansion of the Entity Service Areas); and the providing of sewer service to individuals or entities occupying land outside the Entity Service Areas but within the anticipated future service area within Bingham & Bonneville Counties as defined herein and described by the attached Exhibits incorporated herein which pertain to the Facility and the operations of the Board:

| Exhibit | Description |
|---|---|
| A | Schematic Map showing the Eastern Idaho Regional Wastewater System, including the Eastern Transmission Main, the Northern Transmission Main, the Southern Transmission Main, and the Wastewater Treatment Plant Site (the "Facility") as presently contemplated. |

ORIGINAL

B Map showing the anticipated Service Area

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this agreement, the entities agree to the following:

## ARTICLE I
## DEFINITIONS, PURPOSE, AUTHORITY

### Section 1.1 Definitions

For the purpose of this Agreement, the following terms shall have the following definitions.

Act means Sections 67-2327 through 67-2333, inclusive, Idaho Code.

Administrator means the administrator of this Agreement appointed pursuant to Section 3.1 of this Agreement.

Agreement means this Joint Powers Agreement, dated January 1, 2004.

Ammon means the City of Ammon, a municipal corporation of the State of Idaho, located in Bonneville County, Idaho.

Authority means the Regional Wastewater Authority created by this Agreement.

Basalt means the City of Basalt, a municipal corporation of the State of Idaho, located in Bingham County, Idaho.

Bingham means Bingham County, Idaho, a political subdivision of the State of Idaho.

Biochemicial Oxygen Demand means the quantity of oxygen utilized in the biochemical oxidation of organic matter (BOD): under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (i.e., milligrams per liter)

Board means the board of directors appointed pursuant to Section 3.2 of this Agreement.

Bonneville means Bonneville County, Idaho, a political subdivision of the State of Idaho.

Categorical Pretreatment Standard means any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of Customer and which appear in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

Categorical User means a User or Customer covered by one or more Categorical Pretreatment Standards.

Clean Water Act means the clean Water Act of 1977 as codified in 33 U.S.C. 1251 et. Seq.

Code of Federal Regulations (CFR means the United States Code of Federal Regulations.

Customer means a connection to a collection system of a User that contributes flow to the Facility.

Entities means, collectively those political organizations that participate in the governance of the sewer authority and that have a voting seat on the board; initially defined as, Ammon, Bingham, Bonneville, and Shelley.

Environmental Protection Agency (EPA) means the United States Environmental Protection Agency or other duly authorized official of said agency.

Equivalent Residential Unit (ERU) means a volume or rate of flow of wastewater representing the flow and strength of wastewater typically associated with a connection to the Facility for a single family residence within the service area of the Authority.

Facility means the Eastern Idaho Regional Wastewater Treatment Plant and may include the Eastern Transmission Main, the Northern Transmission Main, the Southern Transmission Main and other property owned and controlled by the Authority.

Federal Priority Pollutant List means the list of toxic pollutants identified in the list included in 40 CFR, Part 403

Firth means the City of Firth, a municipal corporation of the State of Idaho, located in Bingham County, Idaho.

Industrial User means a non-domestic user or customer.

Industrial Waste means the solid, liquid or gaseous waste resulting from an industrial, manufacturing, trade or production process or from the development, recovery, refining, or processing of natural resource.

Iona-Bonneville means the Iona-Bonneville Sewer District, a public sewer district and political subdivision of the State of Idaho, located in Bonneville County, Idaho.

NPDES means the National Pollutant Discharge Elimination System permit program as administered by the U.S. Environmental Protection Agency.

Parties means, collectively, Ammon, Bingham, Bonneville, and Shelley.

POTW means Publicly Owned treatment works of the Authority.

Pretreatment means the reduction of the amount of pollutant, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the Facility. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

Pretreatment Standards means prohibited discharge standards, categorical pretreatment standards and local limits established by the Authority.

Private Sewer means all sewer except public sewers.

Public Sewer means a sewer which discharges directly or indirectly into the Facility and which is owned by the Authority and located on public property or within a publicly owned easement.

Residential Unit means a building or structure or portion thereof that is constructed and used primarily for residential purposes.

Sanitary Sewer means a sewer that conveys, or which is intended to convey, sanitary sewage or industrial waste, or a combination of both.

Service Charge means the charge assessed by the Authority for oepration and maintenance of the facility, debt service, and reserve fund.

Shelley means the City of Shelley, a municipal corporation of the State of Idaho, located in Bingham County, Idaho.

Significant Industrial User means a User subject to Categorical Pretreatment Standards or a User that discharges an average of 25,000 gpd or more of process wastewater into the Facility or contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the Facility or is designated as such by the Authority on the basis that it has a reasonable potential for adversely affecting the Facility's operation or for violating any pretreatment standard.

Total Suspended Solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

Treatment Works means those devices and systems defined in Section 35.905-23 of the Federal Register, Vol 39, Number 29, Pt. III, published February 11, 1974.

Users means any public entity or Industrial User legally authorized to collect wastewater and that contributes flow to the Facility and is represented on the Board by an Entity representative or private corporation.

Woodville means the Woodville Water & Sewer District, a public sewer district and political subdivision of the State of Idaho, located in Bingham County, Idaho.

**Section 1.2 Name, Composition, Office, and Term**

Office: The principal office of the Board shall be at the Eastern Idaho Regional Wastewater Treatment Facility, or at such other place as may be designated by the Entities. During the interim time until the Facility is constructed, the principal office of the Board shall be at the Shelley City Offices, or at such other place as may be designated by the Entities This Agreement and all records of the Board shall be maintained at the office and shall be available to all Entities and all members of the general public for inspection and / or copying (at the requesting party's expense) at reasonable business hours and on reasonable notice.

**Section 1.3 Purpose**

The purpose of this Agreement is to provide for the joint financing, design, acquisition, construction, management, and operation of a regional sewage treatment and disposal facility (the

"Facility") along with transmission mains and lift stations to serve the Users. Users are classified as follows:

1. City Users are those Users that own and operate a collection system under Idaho Law and represented on the Board by their Entity Board member, currently defined as Ammon, and Shelley. The City Service Areas are currently coextensive with the jurisdictional boundaries of the Cities and may be expanded within the accepted service area of the Authority at the discretion of the individual User, subject only to the provisions of Section 5.3 below.

2. District Users are those Users that own and operate a collection system under Idaho Law and represented on the Board by their Entity Board member, currently undefined. The District Service Areas are currently coextensive with the jurisdictional boundaries of the Sewer Districts, and may be expanded within the accepted service area of the Authority at the discretion of the individual User, subject only to the provisions of Paragraph 9.2 below.

3. County Users are Users that own and operate a collection system under Idaho Law and represented on the Board by their Entity Board (County) member, currently defined as Bingham County and Bonneville County, or that represent public or private Users that do not have their own representative on the Board, currently defined as Firth, Basalt, and Woodville.

4. Private Users are those private individual and corporation Users provided sewer service by virtue of their location within the Counties and represented on the Board by their Entity Board (County) member. Private Users are encouraged to participate in the Facility through a City, District or County User.

**Section 1.4: Authority**

This Agreement is entered into under the authority of the Act and Chapter 3, 10, and 17 of Title 50, Chapter 32 and 41 of Title 42, and Section 31-877, Idaho Code.

## ARTICLE II
## DURATION, AMENDMENT AND TERMINATION

### Section 2.1: Term

The term of this Agreement and of the Board shall be for so long as the Facility, or any part thereof, is required to provide sewer collection and treatment service for Users in the area to be served by the Facility unless sooner terminated in accordance with Section 2.3 of this Agreement.

### Section 2.2: Amendment

The Parties reserve the right to amend this Agreement at any time by written unanimous agreement of the Parties; provided, that no amendment shall violate or impair any then-existing contractual obligation relating to the Facility, including, but not limited to, contracts relating to the financing of the Facility.

### Section 2.3: Termination

The Entities reserve the right to withdraw from this Agreement, by written notification to all other Entities at any time prior to its stated termination date; provided that no such withdrawal shall occur unless and until adequate provisions have been made for any then-existing contractual obligations relating to the financing of the Facility, all property of the Authority owned jointly by the Entities, and all other financial obligations shared by the Entities including , but not limited to, expenses incurred by the Regional Steering Committee prior to ratifying this Agreement.

## ARTICLE III
## CREATION OF REGIONAL WASTEWATER AUTHORITY

### Section 3.1: Regional Wastewater Authority

There is hereby created a separate legal entity, pursuant to Section 67-2328, Idaho Code, to be known as the Eastern Idaho Regional Sewer Authority (the "Authority"). The Authority shall be a public entity of the State of Idaho with the powers set forth in the Agreement. The purpose of the Authority shall be (1) to acquire, construct, own, operate, and maintain the Facility, and (2) to provide wastewater transmission, treatment and disposal services to the Entities by means of the Facility, or such alternative or additional facilities as the Entities may hereafter authorize.

### Section 3.2: Administrator

The Authority may at its discretion and if determined as the best interest of the Authority hire administrative staff to serve as the administrator of the Authority, contract with an outside corporation to serve as the administrator, or contract with one of the Entities to perform the role of administrator. In the interim, Shelley, acting by and through its Mayor and Council or such other official of Shelley as the Mayor and Council shall designate, shall serve as the Administrator of the Facility and of this Agreement, subject to the approval of the Board.

**Section 3.3: Board of Directors**

The Authority shall be governed by a board of directors (the "Board"), initially consisting of one member from each of the original four (4) Entities as currently constituted by the individuals that sit on the Regional Steering Committee. Following formation of the Authority, each Entity shall appoint two (2) individual representatives, each of whom shall be fully authorized and empowered to attend all meetings and vote on all Board matters on behalf of the respective Entities. The Board must ratify each director by a two thirds majority. Each Entity shall designate one representative as "primary" and the other as "secondary", with the function of the secondary representative being only to act in the absence or unavailability of the primary representatives. Each Entity shall provide and maintain at the office of the Board, a duly authorized resolution of that Entity setting forth the authority of the individual representatives to bind such Entity with respect to all decisions required of or deemed appropriate by the Board. Except for the Major Decisions described in Article V below, which must be approved by direct action of each Entity, the representatives shall have full authority to vote on behalf of the Entities with respect to Board business, and it shall be the responsibility of each Entity to provide guidelines to its representatives as to how that Entity's interests should be voted.

Directors so appointed may, but need not be, members of the governing board of the appointing Entity. A director shall receive no salary for service on the Board, but may be reimbursed for actual out-of-pocket expenses incurred in connection with Authority business by the Authority in accordance with the policies of the Authority. Any director may be removed at any time by his/her appointing Entity.

**Section 3.4: Officers**

Officers: The Board shall designate one (1) of its members as chairman, one (1) as vice-chairman, and one (1) as secretary, and shall appoint a treasurer, who need not be a member of the Board, any of whom may be removed in the manner provided in the bylaws of the Board. The Board may appoint other officers as is deems necessary.

**Section 3.5: Office**

Office: The principal office of the Board shall be at the Eastern Idaho Regional Wastewater Treatment Facility, or at such other place as may be designated by the Entities. During the interim time until the Facility is constructed, the principal office of the Board shall be at the Shelley City Offices, or at such other place as may be designated by the Entities This Agreement and all records of the Board shall be maintained at the office and shall be available to all Entities and all members of the general public for inspection and / or copying (at the requesting party's expense) at reasonable business hours and on reasonable notice.

**Section 3.5: Bylaws & Meetings**

Regular Meetings: Regular meetings of the Board shall be conducted at least monthly at such time and place as may be fixed by the Board. Notice of the time and place of each regular meeting shall be given to each primary representative, personally, or by mail or telephone, at least three (3) days prior to the day of the meeting, and shall be posted on the door of the Board office.

Special Meetings: A special meeting of the Board may be called by any participating Entity. Except in the case of an emergency, notice shall be provided and posted in the manner prescribed for

notice of regular meetings, and shall include a description of the nature of any special business to be conducted by the Board.

Waiver of Notice: Before or at any meeting of the Board, any participating Entity may waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice to that Entity.

Quorum: Any seventy-five percent (75%) of Directors shall constitute a quorum, and a majority of the quorum present shall be sufficient to take any action, except as noted elsewhere in this agreement. However, in the absence of a quorum at a duly noticed meeting, the attending Entities present may adjourn the meeting to another time, but may not transact any other business. Any such adjournment for lack of attendance shall be to a date not less than five (5) days, nor more than twenty (20) days from the original meeting date. Notice for this reconvened meeting shall be provided by the Entities in attendance, in the same manner as for regular meetings. At any such reconvened meeting, which is not attended by a quorum, the attending Entities shall be empowered to take any action on behalf of the Board which would be authorized by this Agreement, except for the Major Decisions described in Article V below, which shall require unanimous consent in all cases.

Open Meetings: Regular and special meetings of the Board shall be open to all members of the public; provided, however, that only the representatives of the Entities (or the Entities themselves) may participate in the actual decision-making.

Regular and special meetings of the Board shall be conducted in compliance with Sections 67-2340 through 67-2347, Idaho Code.

Bylaws: The Board shall adopt bylaws for its own operation.

## ARTICLE IV
## POWERS OF THE BOARD

### Section 4.1: Powers

In addition to any other powers set forth in this Agreement, the Board of the Authority shall have, any ,may exercise the following powers in the name of the Authority:

1. To prosecute or defend, as the case may be, any suit, arbitration, or administrative proceedings asserted against or brought on behalf of the Board.

2. To adopt an official seal and alter the same at pleasure.

3. To authorize any action by motion, resolution, or other official action.

4. To promulgate and adopt all necessary rules and regulation for the management and control of the Facility and any other property or facilities under the control of the Authority.

5. To order, direct, superintend, and manage all repairs, alterations, and improvements to the Facility and any other property or facilities under the control of the Authority.

6. To acquire real property by purchase of lease and to acquire, construct or lease buildings, structures, facilities, and equipment as it may deem necessary to fulfill its duties.

7. To acquire in the name of the Authority by gift or purchase, or by lease, such personal property as it may deem necessary in connection with the improvement, extension enlargement, or operation of the Facility and any other property or facilities under the control of the Authority, and to sell convey, lease, or dispose of any personal property in accordance with the statutory requirements applicable to counties, upon such terms and conditions and for such consideration as the Board deems appropriate.

8. To negotiate agreements with a Health Department, Department of Environment Quality, and other local, state, or federal agencies, for funding, design, etc., of the initial and subsequent Phases of the Facility;

9. To enter into contracts and agreements, cooperative and otherwise affecting the Facility and any other property or facilities under the control of the Authority, including contracts and assurances with the United States of America and any of its agencies or instrumentalities, the State of Idaho and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the State of Idaho, and to cooperate with any one (1) or more of them in acquiring, construction, operating, or maintaining the Facility and any other property or facilities under the control of the Authority.

10. To receive moneys or property from any Party and receive gifts, grants, and donation for money or property from any person or entity, to expend or utilize the same for the purposes of the Authority, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the Authority in investments permitted under Sections 67-1210 and 67-1210A, Idaho Code.

11. To Borrow money and incur indebtedness, not exceeding the budgeted revenues and expenses for the then-current fiscal year of the Authority, and to evidence the same by notes, warrants or other evidence of indebtedness.

12. To open bank accounts in the name of the Board, designate the authorized signatures therefore, and make deposits and withdrawals from Board accounts on the signatures of one or more designated individuals;

13. To have the management, control, and supervision of the Facility and any other property or facilities under the control of the Authority.

14. To retain or employ, discharge, and pay the compensation of the Managing Agent, accountants, contractors, engineers, laborers, Facility operators, consultants, lawyers, and others whose services are required or necessary.

15. To perform rate analysis and establish User fees, and to provide minimum standards for sewer use, spill control, and industrial pretreatment.

16. To fix, periodically increase or decrease and collect rates, fees, tolls, or charges for the use or availability of the Facility and any other property of facilities under the control of the Authority.

17. To monitor actual flows to the Facility and actual numbers of Equivalent Residences (ERs) connected to the Facility from all Users, and to require control of significant commercial and industrial discharges;

18. To establish billing procedures and provide for the collection of funds from all Users for repair, maintenance, and operation of the Facility, including such sinking fund reserves as may be considered necessary;

19. To establish bookkeeping and auditing procedures for the receipt and expenditures of all funds collected by the Board;

20. To furnish an annual status report to each Entity on the Facility, including an audit of all financial aspects and the status of actual flows and hookups from each Entity;

21. To review and approve contracts for acquisition, design, construction management, and construction of Facility components, even though only one (1) Entity may be providing the funding or acting as the "lead" Entity with respect to the construction of any such component;

22. To apply for and cause compliance with the requirements of any grant or load which would be utilized to establish or increase capacity for the Facility or reduce expenses of operation of the Facility;

23. To maintain civil actions for the abatement of any violation of any of the Authority's rules, regulation, or standards.

24. To insure the Facility and related property and any other property of facilities under the control of the Authority and to enter into contracts for insurance, including, but not limited to liability insurance.

25. To exercise all or any part or combination of the powers set forth in this Agreement, and to do all things necessary or incidental to the proper operation of this Agreement.

**Section 4.2: Limitations on Powers**

Nothing in the foregoing enumerations of powers shall be construed as (1) authorizing the Board to recreate any legal, contractual, fiscal, or tort obligation binding upon the Entities, nor (2) to incur any indebtedness or liability exceeding the revenues of the Authority for any one (1) fiscal year. The Authority may not exceed the individual powers relating to financing public projects of the individual Entities comprising the Authority.

The Authority shall have no power to levy or cause to be levied any taxes or to require the Entities to levy any taxes.

## ARTICLE V
## MANAGEMENT, FINANCE AND ACCOUNTING

### Section 5.1: Management

The affairs of the Board shall be managed by all participating Entities, through their respective representatives, with all decisions to be made by a majority vote of the Board at a regular or special meeting; provided, however, that the Board may unanimously appoint a Managing Agent, who may or may not be a representative of an Entity, to manage the day to day administrative affairs of the Board, subject to such scope and limitation as may be unanimously agreed upon by the Entities.

Regardless of the appointment of a Managing Agent, or of the general authority of the Entity representatives as set forth herein, the following major decisions ("Major Decisions") shall require the written approval of all Entities (acting directly through their representatives):

1. Sale, transfer, or encumbrance of all or any part of the Facility;

2. Adoption or revision of an operational budget for the Board, or the incursion or payment of any obligation or contract, except as specifically contemplated in a unanimously approved budget;

3. Expansion or reduction of the capacity of the Facility except as specifically contemplated in Paragraph 9 below;

4. Modification or amendment of this Agreement;

5. Negotiation, amendment, or modification of agreements for the acquisition or disposition of rights in land and/or improvements, including, without limitation, the agreements for use of the Transmission Mains and for acquisition of the Treatment Plant Site;

6. Negotiation, amendment, or modification of agreements with Bonneville County, Bingham County, or other Entities pertaining to the Service Area;

7. Establishment, modification, or revision of rates to be charged Users in the service areas for sewer hookups, transmission, or treatment services;

8. Appointment, establishment, or verification of the authority of Managing Agent;

9. The resolution of a voting deadlock between representatives; and

10. The doing or causing to be done of any act which would have a material adverse effect on the Board of the Facility or which would impose a financial obligation on the Board or either Entity over and above those imposed under a duly approved budget of the Board.

### Section 5.2: Accounting

Accounting: The books and records of the Board shall be kept on a cash basis in accordance with generally accepted accounting principles applied on a consistent basis from year to year.

Fiscal Year: The fiscal year of the Authority shall commence on October 1 of each year and shall end on September 30 of the following year.

Annual Budget: The Board shall prepare a preliminary annual budget for each fiscal year, showing the anticipated revenues and expenditures, which budget shall be adopted as set forth hereinafter. If the preliminary budget provides for a revenue request from the Entities, the preliminary budget shall be certified to the Entities prior to the publication of the preliminary budgets of the Entities. Nothing herein shall be construed as obligating the Entities to grant such revenue request.

Budget Review & Adoption: On or before the last Monday of July, there shall be held at a time and place determined by the Board, a meeting and public hearing upon the proposed budget of the Authority. Notice of the meeting and public hearing shall be published in a newspaper of general circulation in each of the Entities in one (1) issue thereof. The place, hour, and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A summary of such proposed budget shall be published with and as part of the publication of such notice of hearing in substantially the form required n Section 31-1604, Idaho Code. On or before August 5 of each year, a budget for the Authority shall be approved by the Board and certified by the Board to all Entities.

Sewer Service Charges: With respect to each User, the board shall be responsible for assessing and collecting from each Entity (or directly from the Entity Users, as determined by the Board):

1. A debt service fee in an amount established by the Board (which shall be uniform for all Customers as determined on an ERU basis) for the debt service including the interest of the initial capital expense of constructing the Facility.

2. A discharge/hookup fee or its equivalent (sometimes referred to as a "capitalization fee") in a minimum amount as established by the Board (which shall be uniform for all Customers as determined on an ERU basis, and which shall be subject to a mandatory annual adjustment at the beginning of each fiscal year according to the Engineering News Record Index increase over the most recent year for which the Index is published). Even though the capital expense of constructing the Facility shall be paid by the initial Users, the purpose of the charge described in this subparagraph is to create a reserve fund for the construction of further improvements to expand capacity and to spread the burden of capital expenses over the customer base of new Users as well as the original Users;

3. Periodic assessments, as established by the Board, in amounts sufficient to provide for repair, maintenance, and operation of the Facility and reserves therefore ("O&M fees") with each Entity's and User's share of costs to be computed in accordance with the general policy guidance of Section 6.3 below. The intent of the parties is to have O&M fees be uniform for all customers as determined on an ERU basis, to the extent that the fees pertain to operation and management of the Facility as defined herein; however, the Board may, in its discretion, adjust fees to individual

Entity Users if the Board undertakes management and operation of collection systems owned by the Entities but which are not part of the Facility;

4. In addition, the Board may establish a fee, provided that the method for determining the fee is consistent across the Users, to pay for costs associated with the disproportionate burden of conveying and treating flows in excess of the defined ERU allocation for the User. This fee is intended to encourage each Entity to remedy infiltration and inflow problems within their respective collection system.

While each User must collect, as a minimum, debt service fees, O&M fees and discharge/hookup fees established by the Board, this section in no way precludes each User from establishing its own O&M fees and discharge/hookup fees for the area within its jurisdiction. Minimum O&M fees and discharge/hookup fees must be collected by each User and deposited in a dedicated fund maintained by the Board on a monthly or quarterly basis.

Each User agrees to provide, by Ordinance, that discharge/hookup fees or their equivalent will be collected for each building or structures requiring new or additional sewer service within its Service Area boundaries and to standardize its definition of an ERU with those of the Authority and the allocation of ERUs to a particular property. Each User agrees to provide periodic reports as required by the Board giving the numbers of structures, ERUs assigned, the amount of fees collected, and other relevant information requested by the Board.

Proration; Indemnification: It is the intent of this Agreement to allocate costs equitably between the Entities on an approximate percentage of use basis. Each Entity will pay a percentage of the repair, operation, and maintenance of the Facility (including Sewer Transmission Lines, Lift Station, and all other Facility components, as well as the Treatment Plant) based upon its number of ERUs on line compared to the total of all ERUs on line for the Entity Users. Arrangements with Users shall similarly be made on an approximate percentage of use basis; provided, however, that the Board may, in its discretion, exclude certain components of the Facility from consideration in establishing fees to be paid by Users. In addition, a surcharge fee may be established for flows in excess of the calculated flow based on the ERU's reported by each User.

Further, in the event of a federal, state or local court action, concerning the Facility, each Entity will assume responsibility for such litigation in a direct proportion to the percentage of use of the system. This formula shall be based upon the total ERUs on line and in use by that Entity to the total number of ERUs on line and in use by all Users at the time of the event on which the court action is based. Each Entity shall agree to indemnify the other Entity in the same percentage for any damages or costs suffered by the other Entity due to such court action. Any unanticipated cost of such a court action may then be charged to the Users as a cost of operation of the Facility, to be incorporated into and amortized on a reasonable schedule, payable along with the periodic O&M charges.

**Section 5.3: Expansion of Service and/or Capacity**

Expansion of Service and/or Capacity: The parties agree that service provided by the Facility may be expanded in one or more of the following manners, and subject to the following terms and conditions:

1. Addition of Users or Customers Within a Service Area: The User Service areas, as defined herein, are recognized under agreements with the Health Department,

where required. Each Entity shall have the right to expand its number of Users within its Service Area without the consent of the Board; provided, however, that any such expansion shall be subject to availability of capacity of the Facility on a "first come, first served" basis. However, the additional capacity may only be reserved by payment of the appropriate capitalization (discharge/hookup) fee set by the Board as provided herein. In addition, each User shall have the right to expand its number of Customers within its Service Area without the consent of the Board; provided, however, that any such expansion shall be subject to availability of capacity of the Facility on a "first come, first served" basis.

2. Expansion of Service Areas: The User Service Areas may be expanded, within the accepted service area of the Authority at, the sole discretion of the appropriate User, by the lawful expansion of said User, and pursuant to modification of any applicable agreement between Users.

3. Expansion of Treatment Plant Capacity: The parties acknowledge that the Facility is presently designed to accommodate more Customers than will require sewer service on completion of the Regional Wastewater Treatment Plant. By collecting discharge/hookup fees as Customers are added to the system, the Board will accumulate a reserve fund which can later be used to finance construction of additional capacity at the Treatment Plant. After construction of additional capacity, any Entity which desires to add Users to the system, or any User which desires to add Customers to the system, which would require expansion of the Facility for additional capacity, shall have the right to utilize any existing reserve fund for that purpose; provided that the expanding Entity or User shall pay any additional funds necessary to construct the complete next phase of the development of the Facility (including lift stations as well as Treatment Plant expansion and with the size and scope of the "complete next phase" being determined by the Board). The amount advanced by the expanding Entity or User shall than be divided by the then current ERU capital assessment fee to determine the portion of the excess capacity which then belongs exclusively to the expanding Entity. All remaining capacity shall then be considered available at par to any Entity and to the Users as provided herein. Notwithstanding the right of any Entity to require unilaterally the expansion of the capacity, the Board shall unanimously approve and supervise the design and construction of the expansion.

**Section 5.4: Contemplation of Entities**

Contemplation of Parties: Certain basic facts and/or assumptions have been contemplated by the Entities in connection with the negotiation and execution of this Agreement, and are set forth as follows to assist in the interpretation of intent, should questions later arise:

1. The initial design capacity of the Wastewater Treatment Plant is to be determined by resolution with completion estimated in October 2007;

2. The subsequent design capacity of Wastewater Treatment Plant is to be based on growth requirements and demand by the participating Entities. Projected total Facility capacity following the first expansion shall be determined by resolution;

3. Treatment anticipated will be treatment of raw sewage in a mechanical treatment plant with discharge of effluent to the Snake River under the NPDES permit currently assigned to the city of Shelley which will be adopted by the Authority;

4. At no time will a User be entitled to more connections to Regional Facilities than the total number of paid-up discharge/hookup fees in terms of ERUs and/or flow and waste concentrations. Additional reserve capacity will be available to any User on a first come, first serve basis. Capacity may not be allocated or purchased above and beyond the approved design capacity of the Facility, except by Major Decision, and only if the required additional capacity is under design.

## ARTICLE VI
## THE FACILITY

### Section 6.1: The Facility

The Facility shall consist of a regional wastewater treatment and disposal plant and other property, more particularly described as the East Transmission Main, the North Transmission Main and Woodville Lift Station, the South Transmission Main and Firth Lift Station. The Authority shall cause the Facility to be acquired, constructed, operated and maintained, in accordance with the laws of Idaho and applicable federal laws and regulations.

### Section 6.2: Financing the Facility – Initial Capital Expenses

Each entity recognizes the benefit of collaborating on the Project in that the smaller entities realize economies of scale by partnering with the larger entities and the larger entities reap the advantage of potential grant money by partnering with the smaller entities. Based on that understanding, any grant money received by any of the entities and designated for transmission and treatment is expected to contribute to the collective good of the Authority. The financing of the Facility shall be the responsibility of the Entities. The Facility costs shall be recovered through a user rate system. The user rates shall be established by resolution and updated periodically as required by Idaho law and made a part of this agreement by reference. The user rates will be determined in accordance with the following methodology.

The cost shall be shared by the participating Entities based on a pro-rata Equivalent Residential unit (ERU) bases and adjusted for flows measured in excess of the calculated standardized ERU flow attributable to that Entity as well as by consideration of wastewater strength taking into consideration various wastewater characteristics. A standard ERU flow volume shall be determined by the Regional Authority, or it's assigned, based on historical and expected flows to the regional system. Each single family residence shall be deemed as a standard ERU. Multi-family, commercial and industrial connections may be assigned ERU values based on industry standards or may be accounted through installation of meters at the discretion of the Authority and approval of the Entity. Each Entity is responsible for accurate reporting the number and type of connections to their individual collection system to the Authority.

Each Party's share of the initial capital expenses shall be determined by the Board in accordance with the above methodology and may be financed by a contribution of available cash, or by a contribution of the proceeds of revenue bonds, general obligation bonds, local improvement district bonds, promissory notes, or any combination thereof, derived in accordance with the laws governing the contributing Entity. Each Entity shall be responsible for conducting its own bond

election, local improvement district proceedings, or judicial confirmation proceedings, as may be appropriate.

The foregoing shall not in any manner limit each Entity's right to pass by ordinance or resolution its own fee schedule to be assessed against each individual user within its jurisdictional limits.

**Section 6.3: Operation and Maintenance Expenses**

The ongoing operation and maintenance expenses of the Facility shall be financed from year to year by the Entities in accordance with the ERUs reported by Each Entity as a percentage of the total ERUs and adjusted for flows measured in excess of the calculated standardized ERU flow attributable to that Entity as well as by consideration of wastewater strength taking into consideration various wastewater characteristics. At the time of the adoption of the annual budget, as set forth I Article V of the Agreement, the Board shall make an estimate of the operation and maintenance expenses of the Facility for the ensuring fiscal year and each Party's allocated share of such expenses, which amounts shall be duly certified to the Entities. Each Party shall be responsible for collecting and paying to the Authority its allocated share of operation and maintenance expenses, trough fees, taxes, any combination thereof, or any other lawful source. The Entities hereby acknowledge that the annual operation and maintenance expenses of the Facility constitute ordinary and necessary expenses, authorized by the general laws of the state, of the Entities, and each of them, within the meaning of Article 8, section 3, Idaho Constitution, and that the obligation of each Party to pay its allocated annual share of the operation and maintenance expenses of the Facility, as determined by the Board, shall be absolute during the term of this Agreement.

## ARTICLE VII
## EFFECTIVE DATE

**Section 7.1: Effective Date**

This Agreement shall be in full force and effect on and after January 1, 2004

## ARTICLE VIII
## ENTITY AUTHORIZATION

**Section 8.1: Entity Authorization**

Each Entity, and each individual signing on behalf of an entity, hereby agrees that the execution of this Joint Powers Agreement is fully authorized by said Entity and will be supported by an appropriate resolution to be filed at the office of the Board.

City of Ammon
Bonneville County, Idaho

By _____
Mayor

ATTEST:

Ammon City Clerk

(S E A L)

Bingham County, Idaho

By _____
Commissioner

By _____
Commissioner

By _____
Commissioner

ATTEST:

County Clerk

(S E A L)

Bonneville County, Idaho

By _____
Commissioner

By _____
Commissioner

By _____
Commissioner

ATTEST:

County Clerk

(S E A L)

City of Shelley
Bingham County, Idaho

By _____
Mayor

ATTEST:

_____
Shelley City Clerk

(S E A L)

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