DRIGGS/VICTOR

INTER-CITY AGREEMENT
FOR WASTEWATER TREATMENT SERVICES

This AGREEMENT, made and entered into the 30th day of September, 2011, by and between the City of Driggs an Idaho Municipal Corporation, hereinafter referred to as **"Driggs"**, and the City of Victor, an Idaho Municipal Corporation, hereinafter referred to as **"Victor"**.

WITNESSETH

WHEREAS, the parties hereto entered into a similar agreement on October 13, 1999, which they have operated under since such date (the "Former Agreement") and now wish to replace with this Agreement; and

WHEREAS, **Victor** has no wastewater treatment facility and the governing body of said City desires to provide a wastewater collection and treatment facility for **Victor** and the surrounding area; and

WHEREAS **Driggs** has a wastewater lagoon and treatment facility hereinafter collectively referred to as "Wastewater Facilities", and said Wastewater Facilities are presently being improved and will be of sufficient size and capable of receiving and treating the anticipated wastewater from **Victor** and the surrounding regional area; and

WHEREAS, the parties to this Agreement desire to enter into an agreement in writing, which shall supersede and replace the Former Agreement, whereby **Driggs** will accept and treat the anticipated wastewater from Victor and the surrounding regional area delivered to a point to be identified and known hereinafter as the "Major Collection Point";

NOW THEREFORE, in consideration of the mutual covenants and undertakings hereinafter stated, to which each party hereby binds and commits itself, it is agreed as follows:

1) **2010-2011 Reconstruction**. Driggs agrees that it will bond for and pay all costs associated with reconstruction of the existing facility using funds identified in the Judicial Confirmation which occurred on January 18, 2011, which it is anticipated will include a zero percent interest loan with approximately Two Million Five Hundred Thousand and 00/100 Dollars of debt forgiveness from the Idaho DEQ (the "Loan"). The debt service to be passed through to the users of Victor shall be from this bond, and the 1999 sewer reconstruction bond which has an approximately $760,000.00 unpaid principal balance, until such time as additional debt may be required to be incurred as set forth in this Agreement. Reconstruction of the existing facility is projected to result in a facility that can

service all the waste water needs for both parties consistent with the study conducted by Aqua Engineering, Inc in 2009 which was an addendum to the earlier Nelson Engineering study. The initial capacity shall be at least 900,000 gallons per day for all users.

2) **Trunk Line**.

A) Pursuant to the Former Agreement Victor installed at its sole expense a trunk line extending from its wastewater collection system to a manhole located at manhole 35T per the 1999 plans, and **Driggs** installed at its sole expense a trunk line extending from its pressure line to a manhole located at station 212+00, a point approximately midway between **Victor** and **Driggs** (together the "Trunk Line"). The cost of the manhole located at this point was paid for by **Victor**. This point, at station 212+00 is known as the "Major Collection Point'.

B) Any connections made to the Trunk Line outside and inside the corporate limits of **Victor**, and up flow from the Major Collection Point, shall be assessed a connection fee per equivalent residential unit for the purpose of funding capital improvements, and **Victor** shall have the obligation and responsibility to collect this fee up flow from the Major Collection Point. Any connections made to the Trunk Line outside the corporate limits of **Driggs**, and down flow from the Major Collection Point, shall be assessed a connection fee per equivalent residential unit for the purpose of funding capital improvement, and **Driggs** shall have the obligation and responsibility to collect this fee down flow from the Major Collection Point.

C) Victor and Driggs have agreed to make certain upgrades to the Trunk Line. Driggs agrees to provide the necessary funds for these upgrades of the Trunk Line through the Loan, with the debt service of any such increase specifically attributable to the Trunk Line to be borne by the Victor and Driggs users pro-rata based on the ration set forth in section 5 below.

D) Victor and Driggs both agree that they shall clean and hydrowash their respective portions of the Trunk Line at least once every year. In addition, both Victor and Driggs agree that they shall video their respective portions of the Trunk Line at least once every year.

3) **Cost Sharing of Treatment Facility Capital Improvements**.

A) After the 2010-2011reconstruction, in the event further capital improvements to the **Driggs** wastewater treatment facilities are required, including, but not limited to, increasing the capacity of the lagoons, adding a new lagoon, meeting a government mandate, or other expansion to increase capacity, both hydraulic or biological, Victor shall have the option of either:

i. Sharing in such costs. The formula for sharing the cost for such

improvements shall be based upon the total volume of wastewater **Victor** has in the 12 month period immediately preceding the letting of a bid for such improvements, as measured at the Major Collection Point compared to the total volume of wastewater **Driggs** has for the same time period, as measured at the treatment facilities. **Victor** shall keep accurate records of flow at the Major Collection Point and make the same available to **Driggs** upon request. **Driggs** shall keep accurate records of flow at the treatment plant influent flow meter station and make the same available to **Victor** upon request. In the event Victor agrees to share in such costs the terms of this Agreement shall be modified such that Victor is comfortable that the capital expenditure they make in the facilities is commensurate with the terms of this Agreement, or

ii. Not participating in the sharing of such capital costs while having Driggs pass through Victor's proportionate share of the debt service of such costs pursuant to the terms of this Agreement.

B. In the event the parties agree to terminate this agreement, Victor would be given ample time to create a solution for their waste water needs before the Agreement came to an end. In no such event shall this Agreement be terminated if Driggs agrees to pay for the cost of such improvements, in which case the treatment fees shall be appropriately adjusted. Any such adjustment shall be made based on the useful life of the improvements so that Victor pays their pro-rata share of the straight line amortization (based on the improvements useful life) of such improvements, at the same interest rate Driggs may pay for the bonding of any such improvements, for as long as this Agreement is in effect.

C. Victor shall be able to review any proposed capital project, and shall be notified when any project underway goes over its previously reviewed budget. All capital improvements must be billed to Victor in a detailed fashion on at least a quarterly basis.

4) **Measuring Devices**. The measuring device installed at the Major Collection Point is owned and under the control and maintained by Victor. Victor agrees to continue paying the cost and expense of maintaining such device and **Driggs** shall have the right to verify the meter readings and otherwise inspect said device at anytime. Measuring devices located within **Driggs** collection system, or at the Wastewater Facilities are owned and under the control and maintained by **Driggs**. **Driggs** agrees to continue paying the cost and expense of maintaining such device and Victor shall have the right to verify the meter readings and otherwise inspect said devices at anytime. On a quarterly basis, or as requested by either party hereto, , the two measuring devices shall be reconciled against one another or an external device if so desired. Each party shall pay for the recalibration of their own device.

5) **Connections**. Any single connection in excess of ten (10) equivalent residential units made to the trunk line and collection systems outside and inside of the City limits of **Driggs** and **Victor** shall be made only with the express written consent of both cities which consent shall not be unreasonably withheld. If at any time, the Trunk Line reaches its capacity as a result of additional flows, then both cities shall share in the cost of installing larger lines where necessary. The ratio of participation shall be based on the number of equivalent residential units each party has connected to the Trunk Line, which have contributed to the need for a larger line. If the parties hereto are not able to agree on the proportional ratios, an in stream flow calculation shall be taken manually at the point the Trunk Line connects with the **Driggs** system, and the proportional ratios shall be based upon the actual flows, with the cost of such measurement being shared in the same proportions as are determined for the line increase.

6) **Termination - Reimbursement** In the event **Victor** participates in adding capital improvements to the treatment facilities only as indicated above, and then for some reason this Agreement is terminated and Victor no longer uses **Driggs'** Wastewater Facilities, then **Driggs** agrees to reimburse Victor for its share of said added capital improvement costs less depreciation based upon the average estimated life of said improvements and the number of years said improvements have been in existence as of the date **Victor** discontinues its use of **Driggs'** Wastewater Facilities.

7) **Service Area Restrictions**. **Driggs** agrees to accept the wastewater passed through the measuring device at the Major Collection Point and from said point to be solely responsible for conveying said wastewater to the **Driggs** Wastewater Facilities and for the treatment and disposal of said wastewater. However, **Driggs** reserves the right to accept or not to accept wastewater from **Victor** if it is determined that the source of any wastewater is in violation of any applicable State or Federal Regulations. **Driggs** shall be responsible for insuring that all sources within the **Driggs** system are in compliance as well, and will have the right to reject any and all wastewater, whether from **Victor** or **Driggs** if the residence, business or other source shall cause a violation of State or Federal regulations.

8) **Treatment Fees**.

A) Except as otherwise herein stated, **Victor** agrees to pay **Driggs** and**Driggs** agrees to accept from Victor, as sole consideration for **Driggs** accepting, conveying, treating, and disposing of wastewater a regular fee for each one thousand (1000) gallons of wastewater measured at the Major Collection Point. Said fee shall be in the same amount that Driggs pays for each one thousand (1000) gallons of waste water. Said fee shall be paid monthly on or before the 10th day of each month for the prior month, commencing with the month following the first month that

wastewater is delivered to the Major Collection Point by Victor. The fee is to be established and approved annually by both cities by resolution. All such fees shall be based on actual costs incurred in running the facilities.

B) If any of the rates charged by **Driggs** to **Victor** hereunder are found to be in violation of law or unenforceable, and this situation cannot be retroactively remedied to the satisfaction of both parties, then this Agreement shall become immediately terminable by either party and may be so terminated upon giving the other party a written notice of its intent to so terminate, and the date upon which such termination shall take effect, provided however, that it can be no sooner than the later of one year from the date of notice or such date as allows Victor to establish another means for handling their waste water.

C) All operation and maintenance costs shall be identified and delineated by Driggs'. Prior to incurring a material increase in such costs Driggs' shall consult with Victor. All employees, consultants, and independent agents of Driggs' whose time is charged against operation or maintenance of the facilities shall be appropriately pro rated between such maintenance and operation and other duties outside the scope of such operation and maintenance.

D) On at least an annual basis, at a date to be determined by Victor and Driggs, the books and records relating to the ownership, maintenance, and operation of the Wastewater Facilities shall be audited by an independent auditor. The scope of such audit shall include but not be limited to the pass through of all fees and other costs passed through to Victor as well as the status of all outstanding debt relating to the Wastewater Facilities. This audit may be performed by the Driggs independent audit firm and the cost shall be born equally by Victor and Driggs.

E) In the event it is determined that a measuring device is inaccurate and has caused either party to this Agreement to pay more or less than what would have been paid had such device been accurate, then such payments shall be retroactively adjusted by virtue of a credit to forthcoming fees due under this Agreement. In no such event shall such adjustments be made retroactively for more than a 12 month period.

9) **Equitable Allocation**. The parties hereto agree that the fee structure contained in this Agreement creates an equitable allocation with all revenues being delegated to repairs, replacement, and maintenance of the facilities and its components in proportion to that used by each party's users.

10) **Wastewater Strength**. The parties hereto shall establish in writing a set of

"Capacity Limits" and "Capacity Charges". In the event that either Driggs or Victor users causes the facilities to be burdened with effluent beyond the Capacity Limits, then such municipality shall pay the commensurate Capacity Charge. For the purpose of controlling the amount of organic load of wastewater coming from pollution sources within the total system, it is agreed that **Victor** and **Driggs** will comply with the Environmental Protection Agency (EPA) requirements for pretreatment standards for existing and new sources of pollution, and the establishment of user charges associated with the treatment of the industrial wastewater. Driggs shall copy Victor on any violation notices and other DEQ, EPA, and other agencies correspondence. **Victor** and **Driggs** hereby agree to share the necessary cost data to enable the calculation of the costs associated with the treatment of the residential, commercial and industrial wastewater over and above the cost mentioned elsewhere in this Agreement. If at any time, the EPA or any other Federal or State agency requires that wastewater treatment costs should be calculated by some formula other than as herein set forth, then both **Victor** and **Driggs** agree that this Agreement shall be amended so that its fee structure meets said requirement if necessary.

11) **Uniform Rules**. **Victor** and **Driggs** agree that wherever practicable, uniform rules and regulations will be established, including but not limited to the discharge of harmful substances into the wastewater system in excess of minimum standards prescribed; to prohibit storm, surface, or groundwater from entering the wastewater system; and to provide adequate inspection of building, wastewater, and street construction to prevent such from entering the wastewater system.

12) **Fee Adjustment** Except as mentioned above, it is further agreed that the fees chargeable to **Victor** by **Driggs** may be adjusted only by reason of an adjustment of charges to **Driggs** users for increase in the operation and maintenance for the treatment of wastewater as of the date of this Agreement. Said current charges for treatment are attached hereto and marked "Exhibit A". Further, such an adjustment in fees is equal for **Driggs** and **Victor** unless special circumstances exist which would make collection and treatment of either **Victor** or **Driggs** users more expensive.

13) **Terms**. This Agreement shall remain in effect for a period of Twenty (20) years from the date hereof. Victor shall have two (2) options to extend for five (5) years each. In order to exercise such option periods Victor must give written notice to Driggs of its intent to exercise such option no less than 120 days prior to the expiration of the Agreement. It shall then continue in effect for additional two (2) year periods thereafter unless terminated by either party by giving the other party a notice of intent to terminate, provided, however, after the initial term and any option term, no less than two (2) year notice must be given to terminate.

14) **Adoption and Enforcement of Ordinances**. **Victor** agrees to adopt rules and

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement in duplicate on the respective dates indicated below.

CITY OF DRIGGS, IDAHO

by _____
Dan Powers, Mayor

ATTEST:

_____
City Clerk City Clerk - Deputy

CITY OF VICTOR, IDAHO

by _____
Scott Fitzgerald, Mayor

ATTEST:

_____
Deputy Clerk

THIS AGREEMENT as executed is hereby approved as being in proper form and compatible with the laws of the State of Idaho.

_____
STEPHEN ZOLLINGER, Authorized Attorney
for the City of Driggs

_____
Herbert Heimerl, Authorized Attorney
for the City of Victor