CITY OF VICTOR
Idaho, Established 1889

CITY OF VICTOR

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City Council Staff Report

REPORT DATE: March 26, 2024

MEETING DATE: March 27, 2024

SUBJECT	**Waste Water Treatment Facility Decision (Spring 2025)**
ITEM TYPE	☐ Public Hearing ☒ Work Session ☒ Action Item
PRESENTER	Jeremy Besbris, City Administrator

APPLICABLE VICTOR VALUES

☐Culturally Historic	☒ Sustainable	☐ Connected to Nature
☐ Small Town Feel	☐ Family Friendly	☒ Administrative Need

PURPOSE & PROCESS

The City Council faces a critical decision regarding Victor's long-term wastewater management strategy: it must decide by April 1, 2025, whether to continue sending wastewater effluent to Driggs for treatment or to construct its own wastewater treatment facility. Facing a deadline from Driggs to determine whether Victor intended to continue sending its wastewater to Driggs despite an anticipated and dramatic increase in the cost of treating wastewater, this same question was posed to the council just over a year ago. At that time, the council was specifically asked to consider a land-application wastewater facility, an option which the council declined in large part because the land needed to support such a facility was unavailable. Throughout this time, staff have continued to analyze Victor's waste water treatment alternatives.

However, facing new deadlines imposed by the United States Department of Justice (DOJ) as part of a consent decree, Driggs is requiring Victor to provide Driggs with notice of its final decision regarding the treatment facility no later than April 1, 2025. Accordingly, the purpose of this meeting is for the council to reach a decision on whether to continue sending its waste water to Driggs for treatment, or to notify Driggs of the city's intent to construct its own facility and wind-down the relationship between the two cities with respect to the 2011 Intercity Agreement for Wastewater Treatment Services.

This choice will have far-reaching implications for our city's infrastructure, finances, and environmental stewardship, as well as our control over a vital and increasingly valuable resource - water.

BACKGROUND/ALTERNATIVES

In 1999, the City of Victor entered an Intercity Agreement with the City of Driggs to treat wastewater produced by the City of Victor and its satellite subdivisions. As part of this arrangement, Victor, at its sole expense, constructed a trunkline to a lift station owned by Driggs. At some point prior to 2009, the newly built plant started experiencing compliance issues. Those issues are cited in a letter dated December 3, 2009, from the United States Environmental Protection Agency to the City of Driggs and attached hereto. "[C]oncerned about [Driggs'] ongoing and persistent violations," the EPA warned Driggs of "possible further enforcement, which may include the assessment of monetary penalties of up to $37,500 per day, per violation," and urged Driggs to take immediate and corrective measures.

In 2011, the two cities entered a new InterCity Agreement for Wastewater Treatment Services, where certain provisions addressed an upgraded trunkline to transport Victor effluent as well cost sharing and debt allocation associated with the trunkline and what amounted to a newly engineered Driggs wastewater treatment facility. Engineers working for the City of Victor advised against the design of the new plant selected by Driggs, but ultimately, the decision was not Victor's to make. In 2012, the city of Victor constructed the new trunkline and by 2015, Driggs new plant was operational.

Unfortunately, it wasn't long before Driggs's new plant was facing operational challenges resulting in violations of the Clean Water Act. Those issues are detailed in a 2021 complaint filed by the DOJ where the DOJ levied approximately 160 million dollars in fines and penalties against the City of Driggs (attached). Additional background on the history of discharge violations at the Driggs facility, as well as other plants across the state, can be found in the Idaho Conservation League's annual report. Driven by directives from the Department of Justice, including a consent decree (attached), Driggs must spend an *estimated* $32,000,000[1] to ensure their wastewater facility is compliant with all state and federal regulations.

In the time since the DOJ filed its 2021 complaint against the City of Driggs, the two cities have been working toward renegotiating the 2011 Intercity Agreement to ensure a fair and mutually beneficial arrangement. Simultaneously, the staff of the two cities have sought to reconcile the financial issues raised by the city of Victor. A demand letter sent to the City of Driggs dated December 20, 2024, and attached to this staff report outlines many of the issues the cities have raised and attempted to address since the DOJ lodged their 2021 complaint. Though there has been no formal conclusion to any of the issues outlined in the demand letter and subsequent correspondences between the cities, their respective legal teams continue to work toward a resolution.

SPRING 2024 WWTP ALTERNATIVE DECISION

Among other things, the 2021 DOJ complaint and the associated $160 million fine spurred the City of Victor to examine its wastewater treatment system. Victor staff communicated this fact to the Driggs city staff as a matter of transparency. Toward this end, Victor contracted with Keller Engineering to perform a Wastewater Facility Planning Study (FPS). The council recently adopted that FPS, but the preliminary findings[2] of the FPS indicated that a Victor-specific treatment plant was an option worth further analysis. On March 14, 2024, Driggs notified Victor that a decision was needed by April 11, 2024, regarding whether Victor would build its own plant. Under protest, Driggs agreed to extend the deadline for that notice until June 26, 2024. Facing an aggressive deadline, the Council authorized Sunrise Engineering to perform a site-specific feasibility study for a land-application wastewater treatment facility. The results of that study were presented on June 26, 2024, and Victor sent notice to Driggs by the deadline stating that Victor had decided not to move forward with a Victor-specific plant at that time. The cost and challenge associated with purchasing a sufficient amount of land to construct a land-application treatment facility were the primary reasons cited by the council for their decision.

SPRING 2025 WWTP ALTERNATIVE DECISION

Since the council's June 26th 2024 decision, several factors and conditions emerged that have prompted Victor staff, with the direction of the Mayor and Council, to breathe new life into the wastewater treatment alternative analysis. In particular, Driggs' cost estimate for the government-mandated improvements increased from 25

[1] See Driggs' 60% WWTP Design Presentation,
[2] Keller presented their initial findings on wastewater treatment alternatives to the Council on June 12, 2024.

million to 32 million dollars, and Victor's FPS indicated that continuing to send Victor's wastewater to Driggs would necessitate another 20 million (estimated) in collection system capital improvements. Other factors, including a long delay in the negotiation of a new intercity agreement and disagreement between the two cities on the preliminary findings of an independent audit, also played a role. Aware that Victor was once again examining its options, Driggs notified Victor in a letter dated February 11, 2025. Driggs stated that due to deadlines imposed in the DOJ consent decree, Victor must provide Driggs notice of its intent no later than March 31, 2025. Since then, lawyers for the cities have clarified that April 1, 2025, is the absolute latest that Driggs can wait for Victor's decision.

Decision at Hand: The Council must choose between two options (delaying would breach our commitment to Driggs to make a decision by April and could result in Victor being liable for engineering change orders or other damages associated with a delayed decision):

Option 1: Continue with Driggs (Status Quo)

Pros:

- Responsibility and liability for the plant remain with Driggs (this is also a con given Driggs' track record of running the facility)

Cons:

- Limited control over potentially costly decisions affecting Victor
- Large capital investment in Driggs' plant with no long-term asset ownership
- Dependence on Driggs for upgrades, potentially limiting Victor's growth
- No control over treatment costs, impacting our ability to manage sewer rates
- 20 million (estimated) in collection system Capital Improvement Costs
- Potential loss of treated wastewater as an increasingly valuable resource
    - Giving up control of treated water means forfeiting a significant asset
    - Limits our ability to use reclaimed water for irrigation, groundwater recharge, or other beneficial uses
    - Reduces our resilience to future drought conditions and climate change impacts
    - Potential future land scarcity if Victor decides to build its own plant later.

Option 2: Build Victor's Own Treatment Facility

Pros:

- Secures long-term control over our wastewater treatment and resulting water resources
- Positions Victor to manage and potentially monetize treated water as an increasingly valuable asset
- Allows for implementation of water reuse programs, enhancing local water security
    - Provides flexibility to adapt to changing water regulations and scarcity issues
- Investment in Victor-owned assets, building long-term value for residents
- Flexibility to adapt to future needs and technologies
- Control over treatment costs and sewer rates
- Save an estimated $ 20 million in collection system capital improvements associated with otherwise necessary trunkline and lift stations improvements
- Enhances Victor's water independence and resilience to regional water challenges

Cons:

- Significant staff resources must be allocated to the project

Next Steps:

If the Council decides to continue with Driggs, staff will:

(1) Advance negotiations with Driggs regarding the terms of our continued partnership.
(2) Develop a long-term financial plan to address the anticipated rate increases.

If the Council decides to pursue Victor's own facility, staff will:

(1) Immediately notify Driggs of the decision
(2) Seek council approval to contract with an engineering firm to conduct a feasibility study
(3) Continue the process of land acquisition and detailed facility planning

Implications: This decision extends far beyond wastewater management. It's about an opportunity to secure Victor's water future in an increasingly water-stressed region. By retaining control of our treated wastewater, we position ourselves to better manage local water resources, potentially create new revenue streams, and enhance our resilience to future water scarcity. This decision will shape Victor's approach to water resource management, environmental responsibility, and fiscal planning for generations.

ATTACHMENTS

- 2009 EPA Notice of Violation to the City of Driggs
- 2011 Intercity Agreement for Wastewater Services
- 2021 DOJ Complaint
- 2025 Consent Decree
- Demand Letter from the City of Victor to the City of Driggs dated December 20, 2024
- Independent Audit performed by Cooper Norman. *NOTE: This report presents preliminary findings from our independent audit. These findings have not yet been accepted by the relevant party and should be considered interim in nature. The scope of the final audit may be expanded pending agreement with the other party. While we believe this information to be accurate as presented, readers should note that this is not the final, comprehensive audit report.*
- Driggs Response Letter to Victor's Demand Letter, February 11, 2025
- Victor's Reply to Driggs' February 11, 2025, Letter
- March 12, 2025 Presentation by John Crowley, Esq. (link only) and Slides
- Keller Facility Planning Study (link only)
- Keller FPS Slides (link only)
- Additional Staff Reports (links only)
    - April 18, 2024
    - June 26, 2024 (Sunrise Feasibility Study Findings) & June 26, 2024 (WWTP Alternative Decision)
    - February 26, 2025
    - March 12, 2025

FISCAL IMPACT

While the exact financial impacts cannot be precisely determined for either option, our analysis indicates significant rate increases are inevitable. Based on current projections:

(1) Sewer rates are expected to exceed $100 per user per month, regardless of which approach is chosen.
(2) This rate increase reflects the substantial costs associated with either upgrading Driggs' facility or constructing a new plant in Victor.
(3) Beyond direct costs, intangible factors must be considered:

For example: (a) the potential future value of treated wastewater as a resource, particularly in our water-scarce region; compared to (b) the value of Driggs continuing to bear legal liability for wastewater treatment, should we continue our current arrangement.

(4) For a more comprehensive financial picture, please refer to the table below. Prepared by Keller Engineering, it provides the most current estimates of 20-year and 40-year life-cycle costs for each alternative:

Item	Alt. 1: Status Quo (Stay with Driggs)[1]		Alt. 2: Lagoon & Land Application[2]		Alt. 3: Lagoon & Surface Discharge	Alt. 4: Mechanical & Surface Discharge	Alt. 5: Mechanical & Rapid Infiltration
Forcemain to WWTP	-	-	$2,160,000	$2,160,000	$2,160,000	$2,160,000	$2,160,000
Headworks with Influent Screen	-	-	$500,000	$500,000	$500,000	$500,000	$500,000
Vortex Grit Removal	-	-	-	-	-	$360,000	$360,000
Treatment Lagoons	-	-	$5,010,000	$5,010,000	$5,010,000	-	-
MBBR Treatment & Lagoon Cover	-	-	-	-	$3,519,000	-	-
Oxidation Ditch & Clarifier w/ MOB	-	-	-	-	-	$7,242,000	-
Fine Screen, MBR, & UV Vessels	-	-	-	-	-	-	$10,584,000
UV Disinfection Channels	-	-	-	-	-	$950,000	$0
Chlorine Dosing System	-	-	$300,000	$300,000	$300,000	-	-
Dechlorination System	-	-	-	-	$250,000	-	-
Winter Storage Pond	-	-	$4,270,000	$4,270,000	-	-	-
Irrigation Pump Station	-	-	$690,000	$690,000	-	-	-
Irrigation System	-	-	$500,000	$500,000	-	-	-
Biosolid Dewatering	-	-	-	-	-	$1,880,000	$1,880,000
Rapid Infiltration Basins	-	-	-	-	-	-	$4,775,000
Collection Improvements	$4,892,000	$11,033,000	$1,331,000	$1,331,000	$1,331,000	$1,331,000	$1,331,000
Construction Subtotal	$4,892,000	$11,033,000	$14,761,000	$14,761,000	$13,070,000	$14,423,000	$21,590,000
General Conditions (10%)	$489,200	$1,103,300	$1,477,000	$1,477,000	$1,307,000	$1,443,000	$2,159,000
Subtotal	$5,381,000	$12,136,000	$16,238,000	$16,238,000	$14,377,000	$15,866,000	$23,749,000
Contingency (30%)	$1,614,300	$3,640,800	$4,872,000	$4,872,000	$4,314,000	$4,760,000	$7,125,000
Subtotal	$6,995,000	$15,777,000	$21,110,000	$21,110,000	$18,691,000	$20,626,000	$30,874,000
Contractor OH&P (15%)	$1,049,300	$2,366,600	$3,167,000	$3,167,000	$2,804,000	$3,094,000	$4,632,000
Total Construction Cost	**$8,044,000**	**$18,144,000**	**$24,277,000**	**$24,277,000**	**$21,495,000**	**$23,720,000**	**$35,506,000**
Design, Legal, & Construction (25%)	$2,011,000	$4,536,000	$6,070,000	$6,070,000	$5,374,000	$5,930,000	$8,877,000
Total Project Cost	**$10,055,000**	**$22,680,000**	**$30,347,000**	**$30,347,000**	**$26,869,000**	**$29,650,000**	**$44,383,000**
Property Cost	-	-	$14,800,000	$2,000,000	$2,000,000	$400,000	$2,000,000
Current Obligation to Driggs	$2,072,250	$2,072,250	$2,072,250	$2,072,250	$2,072,250	$2,072,250	$2,072,250
Future Obligation to Driggs	$11,475,000	$11,475,000	$0	$0	$0	$0	$0
Total Project & Land Cost	**$23,600,000**	**$36,200,000**	**$47,200,000**	**$34,400,000**	**$30,900,000**	**$32,100,000**	**$48,500,000**
Electricity & Fuels	$6,000	$6,000	$177,000	$177,000	$214,000	$124,000	$237,000
Chemicals	$0	$0	$16,000	$16,000	$30,000	$16,000	$32,000
Disposal	$0	$0	$6,000	$6,000	$6,000	$34,000	$34,000
Parts	$56,569	$56,569	$65,000	$65,000	$56,000	$61,000	$75,000
Personnel	$255,000	$255,000	$336,000	$336,000	$336,000	$417,000	$417,000
Misc. (office, phone, other costs)	$183,000	$183,000	$238,000	$238,000	$238,000	$238,000	$238,000
O&M Costs Paid to Driggs	$366,000	$366,000	$0	$0	$0	$0	$0
Estimated Annual O&M	$866,600	$866,600	$838,000	$838,000	$880,000	$890,000	$1,033,000
20-Year O&M Present Value	$17,400,000	$17,400,000	$16,800,000	$16,800,000	$17,600,000	$17,800,000	$20,700,000
20-Year Life Cycle Cost	**$41,000,000**	**$53,600,000**	**$64,000,000**	**$51,200,000**	**$48,500,000**	**$49,900,000**	**$69,200,000**

1) The left column only includes costs on the Victor ownership side. The right column includes all costs for collection system improvements, including on the Driggs side.

2) The left column assumes the land application area is purchased by the City. The right column assumes it is leased for no cost.

These projections represent our best estimates based on available data. However, Council should be aware that unforeseen factors could impact these figures over time. The decision before us involves weighing both quantifiable costs and long-term strategic considerations for Victor's future.

STAFF IMPACT

(1) Continuing with Driggs Option:

- Primarily involves renegotiating the intercity agreement.

- Maintains Victor's existing operational structure with no additional staffing needs.
- Delays the need to grow our Public Works Department.

(2) Victor-Owned Plant Option:
- Increases demands on city staff
- Requires expertise in operating and maintaining a wastewater treatment facility, which can be developed in-house with outside training.
- Accelerates the need for additional staffing and specialized roles within the Public Works Department.

LEGAL REVIEW

On-going

RECOMMENDATION

The Council is urged to carefully consider the long-term implications of this decision on Victor's autonomy, financial health, and environmental impact, with particular emphasis on the value of retaining control over our water resources and capital improvements. In the western United States, where water scarcity is an ever-growing concern, the ability to manage and potentially reuse our treated wastewater represents a significant asset for Victor's future. This choice will set the course for our city's wastewater and water management strategy for decades to come, influencing our environmental impact, financial health, and water security in an era of increasing climate uncertainty. Staff, City Officials, and the Mayor all support Victor building its own facility.

SUGGESTED MOTION

Motion to Pursue Victor-Owned Wastewater Treatment Facility: I move that the City of Victor pursue the construction and operation of its own wastewater treatment facility. I further move to direct city staff to: (a) notify the City of Driggs of our intent to discontinue our current wastewater treatment agreement; (b) start negotiating the winding down of of the current agreement with Driggs with the most favorable terms possible or the City of Victor; (c) continue the process of identifying and acquiring suitable land for the facility; and (d) prepare the processes of procuring engineering services to facilitate the completion of a Victor wastewater treatment plant without undue delay.

Motion to Continue with Driggs for Wastewater Treatment: I move that the City of Victor continue its partnership with the City of Driggs for wastewater treatment. I further move to direct city staff to: (a) enter into negotiations with Driggs to secure the most favorable terms possible for Victor in light of Driggs' government mandated upgrades; (b) incorporate anticipated costs associated with the upgrade into the FY26 wastewater enterprise fund budget; and (c) report back to the Council with the results of these negotiations and planning efforts as needed.

[general vote]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

DEC - 3 2009

RECEIVED
DEC 10 2009
DEQ-IDAHO FALLS

Reply To: OCE-133

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION and REQUEST FOR INFORMATION

The Honorable Louis Christensen
Mayor of Driggs
80 North Main Street
P.O. Box 48
Driggs, Idaho 83422

Re: City of Driggs Wastewater Treatment Facility
NPDES Permit Number ID-002014-1

Dear Mayor Christensen:

On August 9, 2001, the U.S. Environmental Protection Agency (EPA) issued a National Pollutant Discharge Elimination System (NPDES) Permit to the City of Driggs, Idaho, (City) for its wastewater treatment facility (Facility), NPDES Permit Number ID-002014-1 (Permit). In March 2006, the City and EPA signed a Consent Agreement and Final Order that addressed the Permit violations relating to effluent exceedances from November 2001 through June 2005. The purpose of this letter is to notify you of violations that EPA discovered after reviewing our administrative files including the Discharge Monitoring Reports (DMRs) submitted by the City and during an inspection of the Facility by the Idaho Department of Environmental Quality (IDEQ) on May 28, 2009. The purpose of the inspection was to determine the City's compliance with the requirements of the Clean Water Act (CWA) and the Permit.

EPA has reviewed the DMRs from July 2005 to August 2009 and identified effluent limitation exceedances that constitute more than 512 violations of the CWA, 33 U.S.C. § 1251 *et seq.* A list of these violations is enclosed. In addition, EPA discovered other reporting deficiencies in the DMRs that also constitute violations of the CWA. Parts II.B and IV.E of the Permit require the City to summarize monitoring results each month on the DMR and sign and certify that the DMRs are true, accurate and complete. During the review, EPA discovered that the City has reported the weekly average results for biochemical oxygen demand (BOD) and total suspended solids (TSS) as one fourth the value of the corresponding monthly average results. For example, the January 2009 DMR specifies BOD and TSS results of 12.02 mg/l and 13.47 mg/l, respectively, for the monthly average concentrations. The corresponding weekly average results are reported as 3.00 mg/l and 3.36 mg/l. Part I.A of the Permit specifies a sampling frequency of once per month for BOD and TSS. Therefore, the concentration results for weekly and monthly averages will be identical with a sampling frequency of once per month. In addition, the loading results for

BOD and TSS will be the same if one sample is collected per month. Failure to submit information that is true, accurate and complete is a violation of Parts II.B and IV.E of the Permit.

Furthermore, the City has failed to submit a written explanation pursuant to Parts II.G (Twenty-four Hour Notice of Noncompliance Reporting) and II.H (Other Noncompliance Reporting) of the Permit regarding these effluent limitation exceedances. Failure to provide written explanations for these exceedances constitutes multiple violations of Parts II.G and II.H of the Permit.

During the review, EPA also discovered that the City has failed to submit the annual Report of Progress regarding the schedule of compliance for chlorine. Part I.A.6 of the Permit specifies that the permittee must achieve compliance with the chlorine effluent limitations of Part I.A (Table 1) on or before September 11, 2006. Until such compliance is achieved, the permittee must submit an annual report of progress by January 31st of each year that outlines progress made towards achieving compliance with the final chlorine effluent limitations. At a minimum, the report of progress must include:

a) An assessment of the previous year's chlorine data and a comparison to the final effluent limitations.
b) A report on progress made towards meeting the effluent limitations.
c) Further actions and milestones targeted for the upcoming year.

Failure to submit the required reports [redacted] a violation of Part I.A of the Permit. Please note that Part I.A.9 of the Permit specifies that [redacted] final effluent limitations for total residual chlorine are not quantifiable using EPA approved ana[redacted]ical methods. Therefore, EPA will use the minimum level of 100 µg/l (0.1 mg/l) as the compliance evaluation level for this parameter.

[address redacted]

May 2009 Inspection

The following violations were [redacted]oted during the inspection:

Part III.E of the Permit specifies that the permittee must at all times properly operate and maintain all facilities and systems of [redacted]atment and control (and related appurtenances) which are installed or used by the permittee. At [redacted]e time of the inspection, lagoon cells 4 and 5 were overflowing and several aeration diffusers in lagoon cell 2 were not operational. Also, the facility's effluent flow meter was hydraulically submerged due to excessive flow from the lagoons. These conditions are violations of Part III.E of the Permit. In addition, the flow results may not be representative of the volume and nature of the monitored discharge. Nonrepresentative sampling is a violation of Part II.A of the Permit.

INFORMATION REQUESTED

The NPDES program is a self-reporting program. NPDES permits specifically require that the permittee must sign and certify under penalty of law that all applications, reports or information submitted to the Director are true, accurate and complete (see Part IV.E Signatory Requirements).

EPA is issuing the enclosed Request for Information to determine if the facility is in compliance with all Permit requirements and conditions. This information is requested pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. The failure to provide all information requested, the failure to adequately explain the basis for such failure, or the making of any false material statement or representation in response to this Request for Information constitutes a violation of Section 308, and may result in an enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and Title 18 of the United States Code, 18 U.S.C. § 1001.

EPA is concerned about the City's ongoing and persistent violations and is reviewing this case for possible further enforcement, which may include the assessment of monetary penalties of up to $37,500 per day, per violation. As such, we urge the City to take immediate corrective measures to ensure that discharges from the wastewater treatment facility comply with all requirements set forth in the Permit. Notwithstanding your response to the Request for Information, EPA retains all rights to pursue enforcement actions to address these and any other violations.

Should you have any questions or comments regarding this letter, please feel free to contact David Domingo, Compliance Officer, at [phone redacted] [phone redacted]1.

Sincerely,

Edward J. Kowalski, Director
Office of Compliance and Enforcement

Enclosures

cc: Jared D. Gunderson, Public Works Director
William Teuscher, IDEQ – Idaho Falls
Rick Huddleston, IDEQ - Boise

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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

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA

Plaintiff,

v.

CITY OF DRIGGS, IDAHO and

STATE OF IDAHO,

Defendants.

Case No. 4:22-cv-00444

COMPLAINT

Plaintiff the United States of America, by the authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Driggs, Idaho (the "City") pursuant to Sections 309(b) and (d) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), 33 U.S.C. §§ 1319(b) and (d), for the City's illegal discharges of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. §

1311(a), including for violations of conditions established in the City's National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. This action involves violations relating to the City's separate sanitary sewer system.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1331, 1345, and 1355.

3. The United States has authority to bring this action on behalf of the Administrator of EPA ("Administrator") under Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. § 516, 519.

4. Venue is proper in the District of Idaho pursuant to 28 U.S.C. § 1391(b) and 1395(a), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the location where the Defendants are located and where the claims arose.

DEFENDANTS

5. The City is a political subdivision of the State of Idaho and a "municipality" and a "person" within the meaning of Sections 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5).

6. The City owns and is responsible for the operation and maintenance of a wastewater treatment plant ("WWTP" or "Facility"), and its associated sewage collection system.

7. The sewage collection system, which conveys wastewater and solids to the WWTP, consists of sewers, manholes, and other associated appurtenances (collectively the

"Sewage Collection System"). The WWTP treats domestic sanitary waste and wastewater from commercial establishments.

8. The WWTP serves a population of approximately 1,984 within the City. The Facility also accepts sewage from the City of Victor ("Victor") and various unincorporated portions of Teton County, pursuant to an inter-city agreement, for a total service population of approximately 5,573.

9. The WWTP discharges effluent from the Facility to Woods Creek, which flows to the Pacific Ocean via the Teton River, Henry's Fork, the Snake River, and the Columbia River.

10. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State.

11. The State of Idaho is named as a Defendant in this action in order to satisfy the requirement of Section 309(e) of the CWA, 33 U.S.C. § 1319(e), that the State be joined as a party.

STATUTORY AND REGULATORY BACKGROUND

Clean Water Act

12. The objective of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA establishes a national goal to eliminate the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a)(1).

13. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" except, *inter alia*, in compliance with a NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

14. The term "person" is defined to include municipalities with jurisdiction over disposal of sewage, industrial wastes, or other wastes. 33 U.S.C. § 1362(4), (5).

15. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include any addition of any pollutant to navigable waters from any point source.

16. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include sewage, sewage sludge, and industrial and municipal waste.

17. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas." "Waters of the United States" has been further defined to include, among other things, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries of such waters. 40 C.F.R. § 122.2 (1993) and 40 C.F.R. § 120.2 (2020).

18. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as "any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged."

19. Section 402 of the CWA, 33 U.S.C. § 1342, provides authority for the Administrator to issue NPDES permits for the discharge of any pollutant, consistent with other provisions of the CWA. Such permits allow the discharge of pollutants by any person into the waters of the United States subject to the terms and conditions set forth therein.

20. Section 402(a)(2) of the CWA, 33 U.S.C. § 1342(a)(2), directs the Administrator to prescribe conditions for NPDES permits to assure compliance with specified provisions of the CWA. Such conditions include effluent limits, sampling requirements, and reporting requirements. 33 U.S.C. § 1311, 1318, 1342(a)(2).

21. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents that are discharged from point sources.

22. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a state may establish its own permit program, and after receiving EPA approval of its program, may issue, administer, and enforce NPDES permits within its jurisdiction.

23. On June 5, 2018, EPA approved the State of Idaho's application to administer and enforce the NPDES program in the State. EPA retains concurrent enforcement authority pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i).

24. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action to obtain appropriate relief, including a permanent or temporary injunction, when any person violates Section 301 of the CWA, 33 U.S.C. § 1311, any condition or limitation in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, or any order issued pursuant to CWA Section 309(a), 33 U.S.C. § 1319(a). The United States Department of Justice has authority to bring this action on behalf of EPA pursuant to Section 506 of the CWA, 33 U.S.C. § 1366.

25. Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), together with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, and 40 C.F.R. § 19.4, any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation contained in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed $59,973 per day for each violation that takes place after November 2, 2015. *See* 87 Fed. Reg. 1676 (Jan. 12, 2022).

GENERAL ALLEGATIONS

26. The WWTP and Sewage Collection System constitute a "treatment works" within the meaning of Sections 502(26) and 212(2)(A) of the CWA, 33 U.S.C. §§ 1362(26) and 1292(2)(A), and a "publicly owned treatment works" ("POTW"), within the meaning of 40 C.F.R. § 122.2 and 403.3(q).

27. At all times relevant to this Complaint, the City was authorized to discharge wastewater from the WWTP to navigable waters from an outfall identified as Outfall 001 in the City's NPDES Permit No. ID-0020141 ("NPDES Permit").

28. The NPDES Permit was issued by EPA on November 4, 2010, pursuant to Section 402 of the CWA, 33 U.S.C. §1342, and became effective on January 1, 2011. The NPDES Permit expired on December 31, 2015. Because the City timely applied for renewal of its NPDES Permit, the NPDES Permit was administratively extended on October 14, 2015, pursuant to 40 C.F.R. § 122.6, until the effective date of the new NPDES Permit issued by IDEQ. In accordance with 40 C.F.R. § 122.6(b), the NPDES Permit remains fully effective and enforceable.

29. Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. Woods Creek, the Teton River, Henry's Fork, the Snake River, and the Columbia River constitute "navigable waters" and "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2 (2020).

31. The NPDES Permit also establishes monitoring, sampling, and reporting requirements, including the monthly submission of discharge monitoring reports ("DMRs") to

the permitting authority, which summarize discharge monitoring data and indicate noncompliance with effluent limits.

32. Discharges from the WWTP are subject to the requirements of City's NPDES Permit. The City's NPDES Permit contains effluent limitations prohibiting discharges of specified pollutants in excess of numeric monthly average, daily maximum, annual total, instantaneous minimum/maximum, and/or daily minimum limits.

FIRST CLAIM FOR RELIEF
(Violations of NPDES Permit Conditions on Effluent Limitations)

33. Paragraphs 1 through 32 are incorporated by reference as if fully set forth below.

34. During all times relevant to this Complaint, the NPDES Permit required compliance with the following limitations on discharges from Outfall 001:

a. Biochemical oxygen demand (BOD_5) shall not exceed a monthly average load of 225 pounds per day, and average monthly concentration limit of 45 mg/L;

b. E. Coli shall not exceed an instantaneous maximum colony count of 406/100 mL per sample;

c. Total Ammonia as N shall not exceed a daily maximum load of 8.4 pounds per day, a maximum daily concentration of 1.68 mg/L, a monthly average load of 4.2 pounds per day, and an average monthly concentration of .84 mg/L; and

d. Instantaneous minimum pH in effluent from Outfall 001 shall not be less than 6.5 standard units.

35. On various days within the past five years, the City discharged effluent from Outfall 001 that did not comply with the NPDES Permit's effluent limitations. A list of the

discharges reported in the City's DMRs that are in violation of the effluent limitations from the period of July 1, 2017 to September 30, 2021 is attached as Appendix A.

36. Each violation of a permit condition is a separate violation of the NPDES Permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, as is each day of discharge.

37. Unless enjoined by the Court, the City's violations are likely to continue.

38. Pursuant to 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. § 19.4, the City is liable for civil penalties not to exceed $59,973 per day for each violation that takes place after November 2, 2015.

SECOND CLAIM FOR RELIEF
(Violations of NPDES Permit Conditions on Sample Collection)

39. Paragraphs 1 through 32 are incorporated by reference as if fully set forth below.

40. During all times relevant to this Complaint, the NPDES Permit required at least five grab samples of effluent from Outfall 001 per month to monitor for E. coli, with at least three to seven days between the collection of each sample.

41. On various days within the past five years, the City failed to sample the effluent from Outfall 001 for E. coli at the frequency required by the NPDES Permit. For example, in September 2020, the City collected five samples during two sampling events and failed to wait the required three to seven days between the collection of each sample.

42. Each violation of a permit condition is a separate violation of the NPDES Permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

43. Unless enjoined by the Court, the City's violations are likely to continue.

44. Pursuant to 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. § 19.4, the City is liable for civil penalties not to exceed $59,973 per day for each violation that takes place after November 2, 2015.

THIRD CLAIM FOR RELIEF
(Violations of NPDES Permit Conditions on EPA approved QA/QC and Chain of Custody Procedures)

45. Paragraphs 1 through 32 are incorporated by reference as if fully set forth below.

46. During all times relevant to this Complaint, the NPDES Permit required the City to follow EPA-approved quality assurance/quality control ("QA/QC") and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5).

47. On various days within the past five years, the City failed to follow the EPA-approved QA/QC and chain of custody procedures required by the NPDES Permit. For example sampling records inspected in September 2020 lacked signature, date, and time when the samples were relinquished to or accepted by the lab.

48. Each violation of a permit condition is a separate violation of the NPDES Permit permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

49. Unless enjoined by the Court, the City's violations are likely to continue.

50. Pursuant to 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. § 19.4, the City is liable for civil penalties not to exceed $59,973 per day for each violation which takes place after November 2, 2015.

FOURTH CLAIM FOR RELIEF
(Violations of EPA Administrative Order)

51. Paragraphs 1 through 32 are incorporated by reference as if fully set forth below.

52. In 2018, EPA entered into a Consent Agreement and Final Order pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), with the City to resolve EPA's claims for 3,722 violations of the NPDES Permit that occurred between November 2012 and June 2017. The City and EPA also entered into a Compliance Order on Consent ("2018 Order") pursuant to

Section 309(a)(3), 33 U.S.C. § 1319(a)(3), to bring the City into compliance with the NPDES Permit.

53. The 2018 Order, which became effective on April 26, 2018, required the City to:

a. Identify the modifications and corrective actions needed at the WWTP to achieve compliance with the effluent limitations in the NPDES Permit within 12 months of the effective date of the 2018 Order and provide written notification to EPA of the identified modifications and corrective actions;

b. Complete construction of any modification to the Facility and implementation of any corrective action within 24 months of the effective date of the 2018 Order and provide written notification to EPA; and

c. Achieve compliance with the effluent limits in the NPDES Permit within 24 months of the effective date of the 2018 Order and provide written notice to EPA that the WWTP had achieved compliance with the effluent limitations.

54. The City failed to implement any of the injunctive relief required by the 2018 Order by the required deadlines described above and, on information and belief, continues to violate the NPDES Permit. On April 23, 2020, the City acknowledged that it would not meet the deadlines required by the 2018 Order and requested an extension of the deadlines in the 2018 Order. EPA did not grant the requested extension. The City has been in violation of the 2018 Order since April 29, 2019.

55. Any person who violates an order issued pursuant to section 309(a) of the CWA, 33 U.S.C. § 1319(a), is subject to civil penalties pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

56. Unless enjoined by the Court, the City's violations are likely to continue.

57. Pursuant to 33 U.S.C. §§ 1319(b) and (d), and 40 C.F.R. § 19.4, the City is liable for civil penalties not to exceed $59,973 per day for each violation that takes place after November 2, 2015.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to 33 U.S.C. § 1319(b) and (d), assess civil penalties against the City, as permitted by law, up to the date of judgement herein;

2. Pursuant to 33 U.S.C. § 1319(b) and (d), enjoin the City from any and all ongoing and future violations of the CWA by ordering compliance with the Act;

3. Pursuant to 33 U.S.C. § 1319(b), order the City to take all steps necessary to come into permanent and consistent compliance with the NPDES Permit, the 2018 Order, and the CWA;

4. Order the City to take all steps necessary to redress or mitigate the impact of the City's violations;

5. Award Plaintiff its cost of this action; and

6. Award such other and further relief, as the Court deems appropriate.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

- x
UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 4:22-cv-0444-DCN

CITY OF DRIGGS, IDAHO and
STATE OF IDAHO,

Defendants.
- x

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action on October 24, 2022 [Dkt. 1], as amended on January 15, 2025 [Dkt. 27] ("Complaint") pursuant to Section 309 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319, alleging that Defendant, City of Driggs, Idaho ("Driggs"), violated and continues to violate the National Pollutant Discharge Elimination System Permit No. ID-0020141 ("NPDES Permit") issued under Section 402 of the CWA, U.S.C. §1342. Defendant, State of Idaho ("State") is joined as a Party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

WHEREAS, the Complaint against Defendants alleges that Driggs violated and continues to violate Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, by failing to comply with the requirements of its NPDES Permit for Driggs' Wastewater Treatment Plant ("WWTP") located West of Driggs on West Bates Road. Driggs' noncompliance includes 3,237 exceedances of NPDES Permit effluent limits, including those for ammonia, five-day biochemical oxygen demand ("BOD5"), E. coli bacteria, and pH. Driggs also had multiple non-effluent limit NPDES Permit violations, including failure to sample at the frequency required by the NPDES Permit, failure to use EPA-approved quality assurance/quality control ("QA/QC") and chain of custody procedures, failure to comply with records contents requirements in the NPDES Permit, and failure to use an approved sampling method. The Complaint also alleges that Driggs failed to meet deadlines related to NPDES Permit compliance included in a May 21, 2018 Compliance Order on Consent ("2018 Order") issued by EPA.

WHEREAS, Driggs has determined that conversion of its current WWTP to an Activated Sludge Process with Membranes WWTP is necessary to achieve compliance with its NPDES Permit.

WHEREAS, Driggs does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because it is the location where Driggs is located and where the claims arose. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants consent to the Court's jurisdiction over this Consent Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Driggs agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Driggs and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Wastewater Treatment Plant ("WWTP") and Wastewater Collection and Transmission System ("WCTS"), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Driggs of its obligation to ensure that the terms of the Consent Decree are implemented. At least 30 Days prior to such transfer, Driggs shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, DOJ, and the United States Attorney for the District of Idaho, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the WWTP and WCTS without complying with this Paragraph constitutes a violation of this Decree.

5. Driggs shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform Work required under this Consent Decree. Driggs shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Driggs shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. The Objective of this Consent Decree is for Driggs to achieve and maintain compliance with the CWA, applicable federal and State regulations, and its NPDES Permit, with the goal of eliminating discharges that fail to meet the effluent limitations established in its NPDES Permit and eliminating non-effluent NPDES Permit violations.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

a. "CWA" or "Act" shall mean the Clean Water Act, formally titled the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* and the regulations promulgated thereunder;

b. "Complaint" means the complaint filed by the United States in this action, as amended on January 15, 2025;

c. "Consent Decree" or "Decree" means this Decree and all appendices attached hereto (listed in Section XXVI);

d. "Day" means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

e. "Defendants" means the City of Driggs and State of Idaho;

f. "DOJ" means the United States Department of Justice and any of its successor departments or agencies;

g. "Driggs" shall mean the City of Driggs, Idaho;

h. "EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies;

i. "Effective Date" means the definition provided in Section XVI;

j. "NPDES Permit" shall mean the National Pollutant Discharge Elimination System Permit issued by EPA for the WWTP, Permit Number ID-0020141, on November 4, 2010 and became effective on January 1, 2011, and any future extended, modified, or reissued permits;

k. "Paragraph" means a portion of this Decree identified by an Arabic numeral;

l. "Parties" means the United States, the State of Idaho, and City of Driggs, Idaho;

m. "Section" means a portion of this Decree identified by a Roman numeral;

n. "State" means the State of Idaho;

o. "United States" means the United States of America, acting on behalf of EPA;

p. "Victor" means the City of Victor, Idaho.

q. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention, and transmission system, including but not limited to, all pipes, force mains, gravity sewer lines, lift stations, pump stations, pumps, manholes, and appurtenances thereto, which are owned or operated by Driggs and which flow to the Driggs' WWTP;

r. "Wastewater Treatment Plant" or "WWTP" shall mean all facilities, devices, or systems which are owned, managed, operated, or maintained by Driggs for the storage, treatment, recycling, or reclamation of municipal wastewater, including the WWTP located at 1250 West Bates Road;

s. "Work" shall mean all activities Driggs is required to perform under this

Consent Decree.

V. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Driggs shall pay the sum of $400,000 as a civil penalty, together with interest accruing from the date of lodging of the Consent Decree, at the rate specified in 28 U.S.C. § 1961 as of the date on which the Consent Decree is lodged with the Court.

10. Driggs shall pay the civil penalty due, together with interest, by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Idaho after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Driggs shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Mayor August Christensen
60 S. Main St.
P.O. Box 48
Driggs, ID 83422
mayor@driggsidaho.org

on behalf of Driggs. Driggs may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XV (Notices).

11. At the time of payment, Driggs shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, [address redacted] Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XV; and (iii) to EPA in accordance with Section XV.

Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. City of Driggs, Idaho and State of Idaho* and shall reference the civil action number 4:22-cv-0444-DCN, CDCS Number, and DOJ case number 90-5-1-1-12596.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

A. CONTROL OF UNDESIRABLE POLLUANTS AND INDUSTRIAL USERS

13. Industrial Dischargers. Pursuant to NPDES Permit Part II.C (Control of Undesirable Pollutants and Industrial Users), Driggs must require industrial users discharging to its WWTP to comply with any applicable requirements of 40 C.F.R. Parts 403 and 471 (Part II.C.1) and to not allow introduction of pollutants detailed in NPDES Permit Part II.C.2(a)–II.C.2(i). To comply with NPDES Permit requirements listed in Part II.C.1 and Part II.C.2, Driggs shall require new non-residential businesses or buildings to complete an industrial user survey at the time of permitting. Driggs shall require inclusion of an industrial user survey with all building/business permits for all non-residential business and new construction. Driggs will also develop and implement a process to follow-up with any industrial users that fail to respond to the survey.

14. Sampling of Industrial Dischargers: Driggs will conduct sampling of discharges from industrial users to comply with NPDES Permit Part II.C.1 and 2 and Driggs' Collection System Monitoring Plan (Attachment C).

15. In each annual report required by Section VII (Reporting Requirements), Driggs shall provide a summary report documenting its sampling efforts and plan to control undesirable pollutants and industrial users as required by NPDES Permit Part II.C and mitigate impacts to the

WWTP, including but not limited to responses from industrial user surveys, sampling locations with corresponding sampling results, and a description of any other follow-up actions taken by Driggs or industrial users.

B. COLLECTION SYSTEM MONITORING

16. Collection System Monitoring. In accordance with Driggs' Collection System Monitoring Plan (attached as Appendix C), Driggs will conduct the following sampling in its collection system for a minimum of two years (eight quarters):

a. Sampling once every quarter to identify seasonal fluctuations at locations identified by Driggs in its Collection System Monitoring Plan;

b. Sampling once every quarter at additional locations identified by Driggs in its Collection System Monitoring Plan will be conducted, if necessary, based on responses to industrial user surveys;

c. Sampling twice every month effluent from Victor at the Driggs South Lift Station to monitor effluent from Victor. Sampling will be conducted during the same weeks as Driggs' twice monthly effluent monitoring requirements at the WWTP detailed in Part I.B., Table 1 of the NPDES Permit.

d. Pursuant to Paragraphs 22 and 23 below, Driggs shall collect quarterly samples from the influent of the WWTP and analyze them for oil and grease. If the average of two quarterly influent sampling results for oil and grease is greater than 100 mg/L, Driggs shall add oil and grease sampling to the sampling detailed in Paragraph 16 above for a minimum of two years (eight quarters).

17. Until September 1, 2029, if collection system monitoring results exceed the following threshold values listed in subparagraphs below for BOD, TSS, ammonia, pH, and oil and grease, Driggs must investigate and provide an explanation of the exceedances:

a. BOD > 500 mg/L;

b. TSS > 400 mg/L;

c. Ammonia > 70 mg/L;

d. pH < 5 or >10; and

e. Oil and Grease > 150 mg/L.

18. After September 1, 2029, the City shall update its Collection System Monitoring Plan with updated threshold values for BOD, TSS, ammonia, pH, and oil and grease for the Activated Sludge Process with Membranes WWTP based on calculation of two times the design criteria for the Activated Sludge Process with Membranes WWTP. Driggs shall submit the updated Collection System Monitoring Plan to EPA for review and approval no later than September 30, 2029, which shall include the updated threshold values for BOD, TSS, ammonia, pH, and oil and grease, including the calculations Driggs prepared to reach the updated threshold values.

19. After two years (eight quarters) and subject to EPA's review and approval, Driggs may propose to reduce the sampling frequency at a sampling location other than the Driggs South Lift Station to once per year if variation in concentrations of all sampled analytes at a single location between at least two consecutive quarterly sampling events is less than 15 percent. In such a proposal, Driggs must include all documentation, including calculations, to demonstrate variation between analytes in at least two consecutive quarterly sampling events is less than 15 percent. Driggs shall submit any proposal requesting to reduce the sampling

frequency as described in this Paragraph with the annual report required by Section VII (Reporting).

20. If Driggs is conducting annual sampling pursuant to Paragraph 19 above and two consecutive annual sample results contain a variation greater than 15 percent, sampling frequency shall revert immediately to the original quarterly frequency pursuant to Paragraph 16 for the duration of the Consent Decree. In each quarterly report required by Section VII (Reporting), Driggs shall provide all sampling results described in Paragraphs 16 through 20.

C. INFLUENT WWTP HEADWORKS MONITORING

21. Once per month, Driggs will take a 24-hour, composite sample and analyze it for BOD, ammonia, and TSS.

22. Once per quarter, during one 24-hour period, Driggs will take a series of 8 discrete 3-hour composite samples and analyze them for BOD, ammonia, oil and grease, and TSS.

23. Once per quarter, Driggs shall take 7 sequential 24-hour composite samples and analyze them for oil and grease and ammonia.

24. Once per quarter, Driggs shall take 4 sequential 24-hour composite samples and analyze them for BOD and TSS.

25. Driggs shall conduct continuous monitoring of flow, pH, and temperature.

26. In each quarterly report required by Section VII (Reporting), Driggs shall provide all influent monitoring results described in Paragraphs 21 through 25 above.

D. LAGOON MONITORING AND SEWAGE SLUDGE MANAGEMENT

27. Lagoon Monitoring and Sewage Sludge Management Plan. Driggs has developed a Lagoon Monitoring and Sewage Sludge Management Plan (attached as Appendix B) to prevent

NPDES Permit violations and properly operate and maintain its lagoons, which are appurtenances to the WWTP, as required by Part IV.E of the NPDES Permit. In compliance with this Plan, Driggs shall:

a. Conduct an annual survey of sewage sludge in the lagoons;

b. Estimate volumes and accrual rates of sewage sludge in the lagoons;

c. Indicate the actions Driggs shall take to manage sewage sludge in the lagoons according to the results of the annual survey; and

d. Sample effluent from the lagoon once per month for BOD, TSS, ammonia, pH, temperature, and E. coli in addition to monthly effluent monitoring requirements at the WWTP detailed in Part I.B., Table 1 of the NPDES Permit.

28. In each quarterly report required by Section VII (Reporting), Driggs shall provide sampling results detailed in Paragraph 27.d above.

29. Lagoon Utilization Plan. Driggs shall develop and submit to EPA for review and approval by January 15, 2026, a Lagoon Utilization Plan. The Lagoon Utilization Plan shall include the following required elements:

a. Description for how Driggs plans to utilize the lagoon between January 15, 2026 and December 15, 2028;

b. Description for how Driggs plans to utilize or decommission the lagoons after December 15, 2028;

c. A timeline and description of each proposed change of Driggs' use of the lagoons, including whether any proposed change includes sewage sludge removal. If any change includes sewage sludge removal, the Lagoon Utilization Plan must include a description of the process for sewage sludge removal and indicate whether Driggs plans to use or dispose of

sewage sludge according to 40 C.F.R. Parts 258 and 503;

d. If Driggs plans to decommission the lagoons, the Lagoon Utilization Plan shall include a plan and schedule for decommissioning the lagoons;

e. Driggs must, at all times, comply with applicable federal, state, and local law, regulation, permits and requirements, including 40 C.F.R. Parts 258 and 503.

30. Sewage Sludge Management Plan. By May 14, 2028, Driggs shall submit to EPA for review and approval a Sewage Sludge Management Plan that shall identify the actions Driggs shall implement to manage sewage sludge from the lagoons, including for use or disposal, with a timeline for each action.

31. Driggs must, at all times, comply with applicable federal, state, and local law, regulation, permits and requirements, including 40 C.F.R. Parts 258 and 503.

32. Driggs must remove sewage sludge from the existing lagoons by September 30, 2029, in accordance with the Sewage Sludge Management Plan.

33. Driggs must give notice to EPA and the State as soon as possible, but not later than 30 days prior to any planned physical alterations or additions that result in a change to Driggs' sewage sludge use or removal practices, as required by Section IV.I of the NPDES Permit.

E. WASTEWATER TREATMENT PLANT UPGRADE

34. Driggs shall convert its current WWTP to an Activated Sludge Process with Membranes WWTP as recommended in the Facility Plan adopted by Driggs on December 19, 2023. Driggs shall complete the items listed in this Paragraph and provide notice and certification to EPA by each deadline listed below, in accordance with the requirements of Section XV (Notices). Each submission or notice shall include the elements identified in

subparagraphs 34.a through 34.r below, as applicable (a list of deadlines for ¶ 34 also in attached Appendix A).

a. Preliminary Design by April 24, 2025. Preliminary Design shall include:

(1) Site layout and location identified;

(2) Overall scope of Activated Sludge Process with Membranes WWTP confirmed;

(3) Environmental assessments performed;

(4) Topographic surveys completed;

(5) Hydrologic analysis completed;

(6) Selection of material (concrete, steel, earth); and

(7) Selection of treatment technologies.

b. 60% Design by April 24, 2025. 60% Design shall include:

(1) Driggs' review and revision of items identified in the previous stage;

(2) Sizing of equipment is underway;

(3) Constructability considerations and logistics identified; and

(4) Initial projections that Activated Sludge Process with Membranes WWTP sizing meets flow and loading projections for all parameters identified in the NPDES Permit.

c. 90% Design by August 7, 2025. 90% Design should closely resemble 100% Design pending any modifications required for permitting or code and shall include:

(1) All plans and specifications for the project completed including but not limited to drawings and details for grading, plumbing,

electrical, structural; and

(2) Final schedule.

d. Financial plans approved;100% Design by January 15, 2026. 100% Design shall include:

(1) Confirmation that Activated Sludge Process with Membranes WWTP sizing meets flow and loading projections for all parameters identified in the NPDES Permit;

(2) Confirmation that all design is complete and meets requirements/is approved by the State; and

(3) Confirmation that Project is ready to go out for bid.

e. Lagoon Utilization Plan by January 15, 2026, in compliance with Paragraph 29.

f. Staffing Plan to be completed by January 15, 2026, in compliance with Paragraphs 37 through 39.

g. Contractor Notice to Proceed by June 9, 2026.

h. Complete conversion of portion of lagoon to equalization basin by April 30, 2027.

i. Complete installation and implementation of new blowers by May 30, 2027.

j. Construction completion of biosolids handling facility associated with the Activated Sludge Process with Membranes WWTP by May 14, 2028.

k. Sewage Sludge Management Plan by May 14, 2028, in compliance with Paragraph 30.

l. Confirmed list of staff positions in place for operation of Activated Sludge Process with Membranes WWTP by October 18, 2028.

m. Completion of construction of Activated Sludge Process with Membranes WWTP by December 15, 2028.

n. Completion of updated Operation and Maintenance Plan, as required by Part II.A. of the NPDES Permit, by December 15, 2028.

o. Submission of updated QAP that shall comply with Part II.B of the NPDES Permit by December 15, 2028, and in compliance with Paragraph 40.

p. Begin performance testing for Activated Sludge Process with Membranes WWTP (fully online) by January 10, 2029. Performance testing shall occur after the commissioning stage and shall start once the Activated Sludge Process with Membranes WWTP receives raw sewage.

q. Continuously operate Activated Sludge Process with Membranes WWTP in compliance with NPDES Permit by September 1, 2029.

r. Driggs must manage sewage sludge from existing lagoons in accordance with the Sewage Sludge Management Plan by September 30, 2029, in compliance with Paragraph 32.

F. INFLOW AND INFILTRATION

35. During the period of high groundwater levels between May 1st and July 31st of each year in Driggs, Driggs shall continue its annual efforts to locate and quantify sources of inflow and infiltration coming into the WCTS. Identified sources of inflow and infiltration found to contribute flows that are in excess of 5 percent of the total daily flows to the WWTP at

any time of year shall be repaired within eighteen months from the date on which they were identified by Driggs.

36. In each annual report required under Section VII (Reporting), Driggs shall summarize inflow and infiltration monitoring results and corrective actions taken that year and any potential corrective actions requiring additional evaluation to be completed with a schedule for completion of the corrective actions.

G. STAFFING

37. By January 15, 2026, Driggs shall develop and submit a Staffing Plan. The Staffing Plan shall explain Driggs' plan to retain adequately trained and appropriately certified and licensed staff required to operate and maintain the Activated Sludge Process with Membranes WWTP as designed. The Staffing Plan shall include at a minimum:

a. Annual staff hour estimates for the Activated Sludge Process with Membranes WWTP for:

(1) Operations;

(2) Maintenance;

(3) Laboratory;

(4) Biosolids/ Sewage Sludge Handling;

(5) Yardwork; and

(6) Automation, SCADA, on-call.

b. Annual staff hour estimates for the WCTS, including:

(1) Operations (including sampling);

(2) Maintenance; and

(3) Industrial user and undesirable pollutants monitoring (including

sampling).

c. Certification requirements needed to properly operate and maintain the facility Activated Sludge Process with Membranes WWTP and WCTS, in accordance with industry standards and applicable requirements.

38. As part of its Staffing Plan, Driggs must include a proposal to hire contract operators by July 20, 2028, if its best efforts to hire sufficient internal staff are unsuccessful.

39. Staffing consistent with the Staffing Plan must be in place by October 18, 2028.

H. OPERATIONS, MAINTENANCE, AND QUALITY ASSURANCE

40. By March 1, 2025, Driggs shall provide to EPA its Quality Assurance Plan ("QAP") for its current WWTP, as required by Part II.B. of the NPDES Permit. Driggs shall at all times maintain an adequate QAP and amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP, as required by Part II.B.4 of the NPDES Permit. In each Annual Report, Driggs shall summarize QAP updates developed and implemented over the previous year.

41. At all times, Driggs shall maintain and implement an Operations and Maintenance ("O&M") Plan as required by Part II.A of its NPDES Permit. Driggs shall maintain a preventative maintenance tracking system as part of its O&M Plan. In each annual report, Driggs shall provide an update from its preventative maintenance tracking system that includes the number of work orders issued; number of work orders completed; and number of work orders outstanding.

I. APPROVAL OF DELIVERABLES

42. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA will in writing:

(a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

43. If the submission is approved pursuant to Paragraph 42(a), Driggs shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 42(b) or (c), Driggs shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions.

44. If the submission is disapproved in whole or in part pursuant to Paragraph 42(c) or (d), Driggs shall, within 45 Days or such other time as EPA and Driggs agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Driggs shall proceed in accordance with the preceding Paragraph.

45. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Driggs to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies.

46. If Driggs elects to invoke Dispute Resolution as set forth in Section XI (Dispute Resolution) concerning a decision by EPA to disapprove, approve on specified conditions, or modify a deliverable, Driggs shall do so by sending a Notice of Dispute in accordance with Paragraph 78 within 30 Days (or such other time as EPA and Driggs agree to in writing) after receipt of the applicable decision.

47. Any stipulated penalties applicable to the original submission, as provided in Section IX, accrue during the 45 Day period or other specified period, but shall not be payable

unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Driggs' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

48. Permits. Where any compliance obligation under this Section requires Driggs to obtain a federal, state, or local permit or approval, Driggs shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Driggs may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Driggs has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. REPORTING REQUIREMENTS

49. Driggs shall submit the following reports to EPA and DOJ at the addresses set forth Section XV (Notices):

a. By February 1, May 1, August 1, and November 1 of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XIX, Driggs shall submit by email, a quarterly report for the preceding three months that includes collection system monitoring sampling results in compliance with Paragraphs 16 through 20 above; influent monitoring results in compliance with Paragraphs 21 through 25 above; lagoon effluent sampling in compliance with Paragraph 27.d above; discharge monitoring reports submitted pursuant to the NPDES Permit and the monthly discharge monitoring report spreadsheets; a summary list of any noncompliance with the requirements of the NPDES Permit; the status of any construction or

compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; and reports to state agencies.

b. By November 1 of each year after the lodging on this Consent Decree, until termination of this Decree pursuant to Section XIX, Driggs shall submit via email an annual report for the preceding year that includes summary report of industrial user information in compliance with Paragraph 15, influent sampling results in compliance with Paragraphs 21 through 25; actions Driggs shall take to manage sewage sludge in compliance with Paragraphs 30 through 33; a summary of odor complaints received by Driggs and odor events identified by Driggs, including Driggs' response(s) to both odor complaints and odor events; inflow and infiltration-related information in compliance with Paragraph 35; QAP updates in compliance with Paragraph 40; maintenance tracking system updates in compliance with Paragraph 41; the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; and reports to state agencies.

c. The quarterly report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Driggs violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Driggs shall notify DOJ and EPA of such violation and its likely duration, in writing, within ten business days of the Day Driggs first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the

time the report is due, Driggs shall so state in the report. Driggs shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Driggs becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Driggs of its obligation to provide the notice required by Section X (Force Majeure).

d. The annual report required by Paragraph 49.b may be submitted concurrently with the November 1 quarterly report required by Paragraph 49.a., such that Driggs may submit one report capturing information required by Paragraphs 49.a., 49.b., and 49.c on November 1 .

50. Whenever any violation of this Consent Decree, or of any applicable permits or any other event affecting Driggs' performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Driggs shall notify EPA by email at R10enforcement@epa.gov and the EPA contacts listed in Section XV as soon as possible, but no later than 24 hours after Driggs first became aware of the violation or event. This procedure is in addition to the requirements set forth in the Paragraph 49.c.

51. Each report submitted by Driggs under this Section shall be signed by an official of Driggs and include the following certification:

> I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

52. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

53. The reporting requirements of this Consent Decree do not relieve Driggs of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

54. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. PUBLIC WEBSITE

55. Driggs maintains a publicly available website titled "Public Outreach on Plant (POOP) Updates" to provide information to the public related to its WWTP: https://driggsidaho.org/departments/public-works/wwtp

56. Driggs shall post the following information on its website, "Public Outreach on Plant (POOP) Updates":

a. Consent Decree. Driggs shall post on the website an electronic copy of the entered Consent Decree.

b. Consent Decree Submissions. Driggs shall post to the website all annual reports required by Section VII (Reporting).

c. Public Notification required under Driggs' NPDES Permit. Driggs shall comply with all public notice requirements under its NPDES Permit, including the requirement in NPDES Permit Part III.I to immediately notify the public, health agencies and other affected entities (e.g., public water systems) of any overflow which Driggs owns or has operational control; or any unanticipated bypass or upset that exceeds any effluent limitation in the NPDES

Permit, by posting this information on the website.

IX. STIPULATED PENALTIES

57. Driggs shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any Work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

58. Late Payment of Civil Penalty. If Driggs fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Driggs shall pay a stipulated penalty of $5,000 per Day for each Day that the payment is late.

59. Permit Violations. The following stipulated penalties shall accrue for each violation of any requirement of Driggs' NPDES Permit specified below:

a. From the date of lodging of the Consent Decree until August 31, 2029: For each violation of the requirement to comply with all daily, weekly, or monthly effluent limits on parameters set forth in the NPDES Permit, Driggs shall pay a stipulated penalty as follows:

Penalty Per Violation
$500 for each violation of each daily or instantaneous maximum limit
$1,000 for each weekly or seven-day limit
$2,000 for each violation of each monthly or 30-day limit

b. From September 1, 2029 through termination of the Consent Decree: For each violation of the requirement to comply with all daily, weekly, or monthly effluent limits on parameters set forth in the NPDES Permit, Driggs shall pay a stipulated penalty as follows:

Penalty Per Violation
$5,000 for each violation of each daily or instantaneous maximum limit $10,000 for each weekly or seven-day limit
$20,000 for each violation of each monthly or 30-day limit

c. Any other violations of the NPDES Permit shall be subject to the following penalties per day.

Penalty Per Violation Per day	Period of Noncompliance
$ 1,500	1st through 14th Day
$ 2,000	15th through 30th Day
$ 2,500	31st Day and beyond

60. Compliance Requirements:

a. Failure to Conduct Required Sampling in Paragraphs 16 through 20 (Collection System Monitoring) and 21 through 25 (Influent Headworks Monitoring).

Penalty Per Violation Per day	Period of Noncompliance
$ 750	1st through 14th Day
$ 1,500	15th through 30th Day
$ 2,500	31st Day and beyond

b. Failure to Submit Timely Complete Work and Provide Submissions for Conversion to Activated Sludge Process with Membranes WWTP listed in Paragraph 34.a through 34.p:

Penalty Per Violation Per day	Period of Noncompliance
$ 500	1st through 14th Day
$ 1,500	15th through 30th Day
$ 2,500	31st Day and beyond

c. Failure to comply with Paragraph 34.q by September 1, 2029:

Penalty Per Violation Per day	Period of Noncompliance
$ 1,500	1st through 14th Day
$ 2,500	15th through 30th Day
$ 5,000	31st Day and beyond

d. Failure to comply with Paragraph 34.r (manage sewage sludge from existing lagoons in accordance with the Sewage Sludge Management Plan by September 30, 2029):

Penalty Per Violation Per day	Period of Noncompliance
$ 1,000	1st through 14th Day
$ 2,000	15th through 30th Day
$ 3,000	31st Day and beyond

e. Failure to comply with Lagoon Monitoring and Sewage Sludge Management Plan, Lagoon Utilization Plan, and Sewage Sludge Management Plan requirements under Paragraphs 27, 29, and 30–33:

Penalty Per Violation Per day	Period of Noncompliance
$ 750	1st through 14th Day
$ 1,500	15th through 30th Day
$ 2,500	31st Day and beyond

61. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII:

Penalty Per Violation Per day	Period of Noncompliance
$ 200	1st through 14th Day
$ 600	15th through 30th Day
$ 1,000	31st Day and beyond

62. Noncompliance with the Consent Decree. The following stipulated penalties shall accrue per violation per Day for each violation of Paragraphs 4, 13, 14, 35, 37, and 38–41:

Penalty Per Violation Per day	Period of Noncompliance
$ 200	1st through 14th Day
$ 600	15th through 30th Day
$ 1,000	31st Day and beyond

63. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

64. Driggs shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

65. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

66. Stipulated penalties shall continue to accrue as provided in Paragraph 63, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of EPA and Driggs or by a decision of EPA that is not appealed to the Court, Driggs shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Driggs shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If Driggs appeals the District Court's decision, Driggs shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

67. Driggs shall pay stipulated penalties owed to the United States in the manner set forth in Paragraph 9 and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

68. If Driggs fails to pay stipulated penalties according to the terms of this Consent Decree, Driggs shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to

limit the United States from seeking any remedy otherwise provided by law for Driggs' failure to pay any stipulated penalties.

69. The payment of penalties and interest, if any, shall not alter in any way Driggs' obligation to complete the performance of the requirements of this Consent Decree.

70. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Driggs' violation of this Decree or applicable law, including but not limited to an action against Driggs for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

X. FORCE MAJEURE

71. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of Driggs, of any entity controlled by Driggs, or of Driggs' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Driggs best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Driggs exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay or non-performance are, minimized to the greatest extent possible. "Force majeure" does not include financial inability to perform any obligation under this Consent Decree.

72. If any event occurs for which Driggs will or may claim a force majeure, Driggs shall provide notice by email to R10enforcement@epa.gov and the EPA contacts listed in Section XV. The deadline for the initial notice is three days after Driggs first knew or should have known that the event would likely delay or prevent performance. Driggs shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Driggs knew or should have known.

73. If Driggs seeks to assert a claim of force majeure concerning the event, within 7 Days after the notice under Paragraph 72, Driggs shall submit a further notice to EPA that includes (a) an explanation and description of the event and its effect on Driggs' completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for Driggs to complete the requirements of the Consent Decree; (d) Driggs' rationale for attributing such delay to a force majeure [if it intends to assert such a claim]; (e) a statement as to whether, in the opinion of Driggs, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (f) all available proof supporting any claim that the delay was attributable to a force majeure.

74. Failure to submit a timely or complete notice or claim under Paragraphs 72 or 73 regarding an event precludes Driggs from asserting any claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether Driggs has exercised its best efforts, under Paragraph 71.

75. After receipt of any claim of force majeure, EPA will notify Driggs of its determination whether Driggs is entitled to relief under Paragraph 71, and, if so, the excuse of, or

the extension of time for, performance of the obligations affected by the force majeure. An excuse of, or extension of the time for performance of, the obligations affected by the force majeure does not, of itself, excuse or extend the time for performance of any other obligation.

76. If Driggs elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Driggs has the burden of proving that it is entitled to relief under Paragraph 71, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 71–73. If Driggs carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by Driggs of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

77. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Driggs' failure to seek resolution of a dispute under this Section concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an action by the United States to enforce any obligation of Driggs arising under this Decree precludes Driggs from raising any such issue as a defense to any such enforcement action.

78. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Driggs sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by

written agreement. If the United States and Driggs cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, Driggs invokes formal dispute resolution procedures as set forth below.

79. Formal Dispute Resolution. Driggs shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Driggs' position, and any supporting documentation relied upon by Driggs.

80. The United States will send Driggs its Statement of Position within 45 Days of receipt of Driggs' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position, and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on Driggs, unless Driggs files a motion for judicial review of the dispute in accordance with the following Paragraph.

81. Judicial Dispute Resolution. Driggs may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 78, unless the United States raises a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of Driggs' position on the matter in dispute, including any supporting factual data, analysis, opinion, or

documentation; and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

82. The United States shall respond to Driggs' motion within the time period allowed by the Local Rules of this Court. Driggs may file a reply memorandum, to the extent permitted by the Local Rules.

83. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 81 pertaining to: the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position taken by the United States is not consistent with the Consent Decree or applicable law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 79, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

84. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Driggs under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment

shall be stayed pending resolution of the dispute as provided in Paragraph 66. If Driggs does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

85. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the WWTP and WCTS or any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Driggs or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Driggs' compliance with this Consent Decree.

86. Upon request, Driggs shall provide EPA and the State or its authorized representatives splits of any samples taken by Driggs. Upon request, EPA shall provide Driggs splits of any samples taken by EPA.

87. Until 5 years after the termination of this Consent Decree, Driggs shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Driggs' performance of its obligations under this Consent Decree. This information-retention

requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Driggs shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

88. At the conclusion of the information-retention period provided in the preceding Paragraph, Driggs shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States [or the State], Driggs shall deliver any such documents, records, or other information to EPA [or the State]. Driggs may assert that certain documents, records, or other information is privileged under the attorney-client privilege, or any other privilege recognized by federal law. If Driggs asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Driggs. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

89. Driggs may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Driggs seeks to protect as CBI, Driggs shall follow the procedures set forth in 40 C.F.R. Part 2.

90. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable

federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Driggs to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

91. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

92. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 91. The United States further reserves all legal and equitable remedies to address any conditions if there is or may be an imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Driggs' WWTP and WCTS, whether related to the violations addressed in this Consent Decree or otherwise.

93. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the WWTP and WTCS or Driggs' violations, Driggs shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 91.

94. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Driggs is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Driggs' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Driggs' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate facility planning or plans and specifications on the part of Driggs shall not be cause for extension of any required compliance date in this Consent Decree.

95. This Consent Decree does not limit or affect the rights of Driggs or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Driggs, except as otherwise provided by law.

96. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

97. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), in the event that the laws of the State, as currently or hereafter enacted, prevent Driggs from raising the revenues needed to comply with this Decree.

XIV. COSTS

98. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Driggs.

XV. NOTICES

99. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by registered mail, return receipt requested, or by email (with a preference for email), addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov

Re: DJ # 90-5-1-1-12596

As to DOJ by mail:
EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-12596

As to EPA by email (preferred): martich.tara@epa.gov and granatt.danielle@epa.gov

As to EPA by mail:
Tara Martich
U.S. EPA
222 W. 7th Avenue, Box 19
Anchorage, AK 99513

As to Defendants:

As to City of Driggs by email (preferred): mayor@driggsidaho.org

As to City of Driggs by mail:
Mayor August Christensen
60 S. Main St.
P.O. Box 48
Driggs, ID 83422
mayor@driggsidaho.org

As to the State of Idaho by email (preferred): brent.king@deq.idaho.gov; Jess.Byrne@deq.idaho.gov; mary.ann.nelson@deq.idaho.gov

As to State of Idaho by mail:

Brent King
Deputy Attorney General
1410 N. Hilton, 2nd Floor
Boise, ID 83706-1255
Brent.King@deq.idaho.gov

Jess Byrne
Director
Idaho Department of Environmental Quality
1410 N. Hilton, 2nd Floor
Boise, ID 83706-1255
Jess.Byrne@deq.idaho.gov

100. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

101. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

102. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Driggs hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVII. RETENTION OF JURISDICTION

103. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

104. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

105. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 83, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

106. After Driggs has completed the requirements of Section VI (Compliance Requirements), has thereafter maintained continuous satisfactory compliance with this Consent Decree and Driggs' NPDES Permit for a period of two (2) years, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Driggs may serve upon the United States and the State a Request for Termination, stating that Driggs has satisfied those requirements, together with all necessary supporting documentation.

107. Following receipt of Driggs' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Driggs has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

108. If the United States does not agree that the Decree may be terminated, Driggs may invoke Dispute Resolution under Section XI. However, Driggs shall not seek Dispute Resolution of any dispute regarding termination until 15 Days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

109. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

110. Each undersigned representative of Driggs, the State, and the Deputy Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that that person is

fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party that person represents to this document.

111. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXII. INTEGRATION

112. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, concerning the subject matter of the Decree herein.

XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

113. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraphs 5, 13-43, 48-56, 85-88, and Appendices A, B, C, is restitution, remediation, or required to come into compliance with law.

XXIV. HEADINGS

114. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXV. FINAL JUDGMENT

115. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Driggs.

XXVI. APPENDICES

116. The following Appendices are attached to and part of this Consent Decree:

"Appendix A" is the Schedule of Deadlines for Activated Sludge Process with Membranes WWTP (CD ¶ 34);

"Appendix B" is the Lagoon Monitoring and Sludge Management Plan;

"Appendix C" is the Collection System Monitoring Plan.

Dated and entered this __ day of _____, 2025

_____
JUDGE DAVID C. NYE

FOR THE UNITED STATES OF AMERICA:

1/6/25
Date

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Susan M. Akers
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

/s/ Joanna Citron Day
JOANNA CITRON DAY
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
t of Justice
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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

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FOR THE FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY CONTINUED:

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For Defendant City of Driggs, Idaho

Dec. 20, 2024
Date

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For Defendant State of Idaho

Appendix A: Schedule of Deadlines for Activated Sludge Process With Membranes WWTP (CD ¶ 34)

CD ¶ 34 Requirements	Deadline	CD ¶ Reference(s)
Submission of Preliminary Design	April 24, 2025	¶ 34(a)
Submission of 60% Design	April 24, 2025	¶ 34(b)
Submission of 90% Design	August 7, 2025	¶ 34(c)
Notice of Financial plans approved;	January 15, 2026	¶ 34(d)
Submission of 100% Design	January 15, 2026	¶ 34(d)
Submission of Lagoon Utilization Plan	January 15, 2026	¶ 34(e), ¶ 29
Submission of Staffing Plan	January 15, 2026	¶ 34(f), ¶¶ 37–39
Submission of Contractor Notice to Proceed	June 9, 2026	¶ 34(g)
Notice of completion for conversion of portion of lagoon to equalization basin	April 30, 2027	¶ 34(h)
Notice of completion of installation of new blowers	May 30, 2027	¶ 34(i)
Notice of construction completion of biosolids handling facility associated with Activated Sludge Process with Membranes WWTP	May 14, 2028	¶ 34(j)
Submission of Sewage Sludge Management Plan	May 14, 2028	¶ 34(k), ¶ 30
Submission of confirmed list of staff positions in place for operation of Activated Sludge Process with Membranes WWTP	October 18, 2028	¶ 34(l)
Notice of completion of construction of Activated Sludge Process with Membranes WWTP	December 15, 2028	¶ 34(m)

CD ¶ 34 Requirements	Deadline	CD ¶ Reference(s)
Submission of Completed of Operation and Maintenance Plan	December 15, 2028	¶ 34(n)
Submission of updated QAP	December 15, 2028	¶ 34(o), ¶ 40
Notice of beginning of performance testing for Activated Sludge Process with Membranes WWTP (fully online)	January 10, 2029	¶ 34(p)
Notice of continuous operation of Activated Sludge Process with Membranes WWTP in compliance with NPDES Permit	September 1, 2029	¶ 34(q)
Notice of management of sludge from existing lagoons in accordance with Sewage Sludge Management Plan	September 30, 2029	¶ 34(r), ¶ 32

APPENDIX B
LAGOON MONITORING AND SLUDGE MANAGEMENT PLAN

DATED: November 26, 2024
Created by: Jay T. Mazalewski

EST. 1910
CITY OF DRIGGS
PUBLIC WORKS DEPARTMENT

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I. Summary and Objectives

II. Annual Operations and Maintenance

III. Warm Weather Operations

IV. Cold Weather Operations

V. Odor Control

VI. Sludge Survey Procedure

VII. Sludge Level Evaluation

[phone redacted] ext 2115
M-TH 8:30am - 5pm
F 8:30am - 1pm

jmaz@driggsidaho.org
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CITY OF DRIGGS
PUBLIC WORKS DEPARTMENT

I. Summary and Objectives:

The Teton Valley Regional Water Reclamation Facility utilizes and operates lagoons as aerobic sludge holding ponds, in accordance with the approved WRF facility upgrade in 2013. Lagoon operation is in compliance with IDAPA Rules 58.01.16.490.02.a.iii.(2) and generally accepted engineering practices identified in the 10 State Standards Chapter 85. The city currently operates two lagoons that are each divided into two cells. Supernatant (excess water) is decanted from the west lagoon via pump station and integrated/mixed into the influent stream after the initial screening (Huber step screens).

This document is intended to be utilized by the licensed wastewater treatment responsible charges operators and staff to guide the management of the sludge in the lagoons. The City will develop detailed SOPs and update detailed SOPs, the QAP, and O&M manuals, as needed, to further implement this Lagoon Monitoring and Sludge Management Plan. Attached to this document is the June 2023 Lagoon Sludge Volume Summary prepared by Forsgren Engineering to be used as the baseline sludge levels and assist in the operator decision making.

II. Operations and Maintenance:

1. Measure sludge depths along gridlines 3 & 8, shown on Figures 1 and 2, between September 1 and November 1. This can be self-performed or performed by a contractor. Sludge survey shall use the same datum as the 2023 Sludge Volume Summary (NAVD84).
   a. By December 31, update capacity calculations and remaining capacity timeline.

2. Once per month test lagoon supernatant from the lagoon return pump wet well for BOD, TSS, Ammonia, pH, Temperature, and E. coli. Tests will be taken the same day as the 2x month effluent testing.
   a. Lagoon return pump will be running during the test and a minimum of 10 minutes prior to testing.
   b. Responsible charge operator will review test results and adjust operations to ensure lagoon supernatant is not negatively affecting operations.

3. Lagoons shall maintain a freeboard of 18-inches.
   a. Verification of freeboard will be part of the weekly maintenance schedule.
   b. If freeboard is not maintained, responsible charge operator shall adjust operations to ensure adequate freeboard is maintained.

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III. Warm Weather Operations (typically April through November):

1. Apply bio-augmentation/sludge reduction products to both lagoons (all cells). Bio-augmentation should occur when lagoon temperatures are 55 F (12.8 C) or greater. Bio-augmentation shall be applied per manufacturer recommendations.

2. After or as ice melts off the surface of the lagoon:
   a. Check and adjust air valves to increase air flow to areas of accumulated sludge identified by the sludge survey.
   b. Turn on a second blower to increase dissolved oxygen and improve mixing of any sludge settled during the previous winter. Recommend a minimum of one week of two blowers running to mix any accumulated sludge.

3. Maintain oxygen concentration between 1.0 and 2.0 mg/l in accordance with 10 State Standards Chapter 85.5.

IV. Cold Weather Operations (typically November through March):

1. Check and adjust air valves to increase air flow to areas of accumulated sludge identified by the sludge survey, prior to ice over. Air adjustment may not be feasible during winter ice conditions.

2. Maintain oxygen concentration between 1.0 and 2.0 mg/l in accordance with 10 State Standards Chapter 85.5, prior to ice over. Dissolved oxygen testing may not be feasible during winter ice conditions.

V. Odor Control:

Odors will be controlled throughout the year per IDAPA Rules and 10 State Standards recommendations. Lagoon odor issues typically occur during the spring when lagoon water warms and biological activity increases. The following procedures will be performed in an attempt to mitigate odors:

1. In the event odor complaints are received, record odor complaint in the operator logbook located in the WWTP office.

2. Implement some or all of the following measures:
   a. Sludge management basins will maintain supernatant sludge separation with a maximum sludge volume of 75%; sludge management is triggered when the average sludge volume

exceeds 70% based on the sludge inventory (in accordance with recommended 10 State Standards for Wastewater Facilities chapter 80 article 85.3).

b. Increase aeration to cells/lagoons; this may be achieved by
    i. Adjusting air valves to increase air to specific areas and/or
    ii. Turning on a second blower.
c. Apply odor control product to the surface of lagoon(s). Rates of application to be determined by operator and manufacturer recommendations to mitigate offsite odors.

VI. Sludge Survey:

A sludge survey will be completed annually between September 1 and November 1 to determine current sludge levels, volumes, and accrual rates of the sewage sludge in the lagoons, and if any actions are needed.

The sludge survey can be self-performed or performed by a contractor based on staffing availability as determined by the operator. By August 1 of each calendar year, Driggs will decide whether it plans to complete the sludge survey using available staff or a contractor. Sludge survey shall use the same datum as the 2023 Sludge Volume Summary.

1. Sludge depths will be measured in 50’ increments along gridlines 3 and 8. Locate and mark 50’ increments along the berm between the lagoons for future reference.

2. Sludge depths should be compared with the June 2023 Lagoon Sludge Volume Summary. Note the water surface elevation may be different.

3. Use sludge judge to determine depth of sludge below water surface, each location should correlate with 50’ increments marked in step 1.

4. Update the consolidate sludge and water surface profiles (Figure 2) at Grid Lines 3 and 8 with recorded data.

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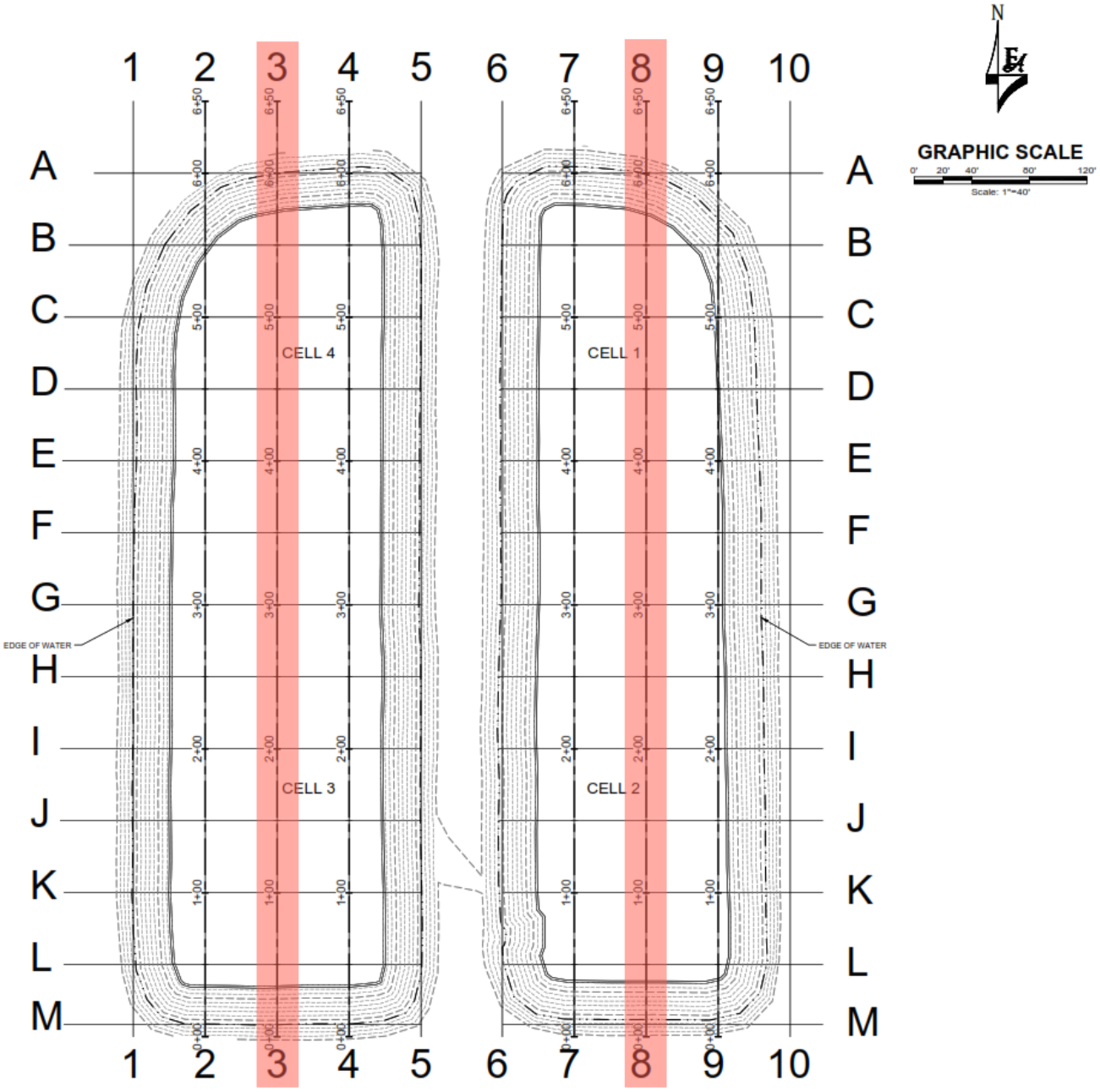
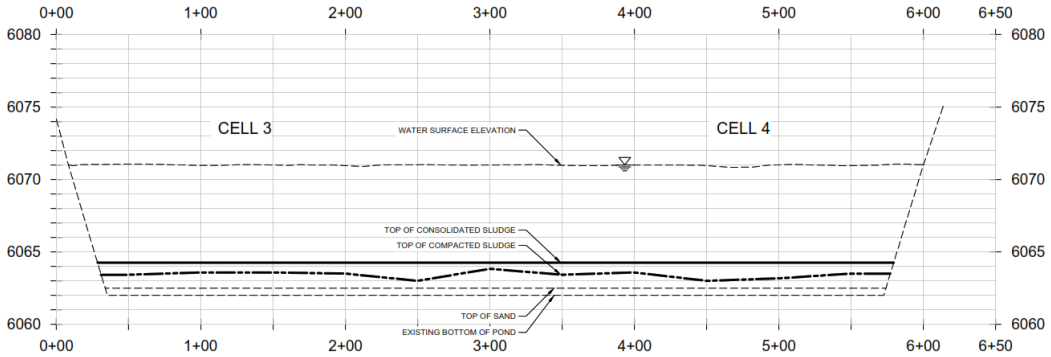


Figure 1

PROFILE AT GRID LINE 3
SCALE: 1" = 40'



PROFILE AT GRID LINE 8
SCALE: 1" = 40'

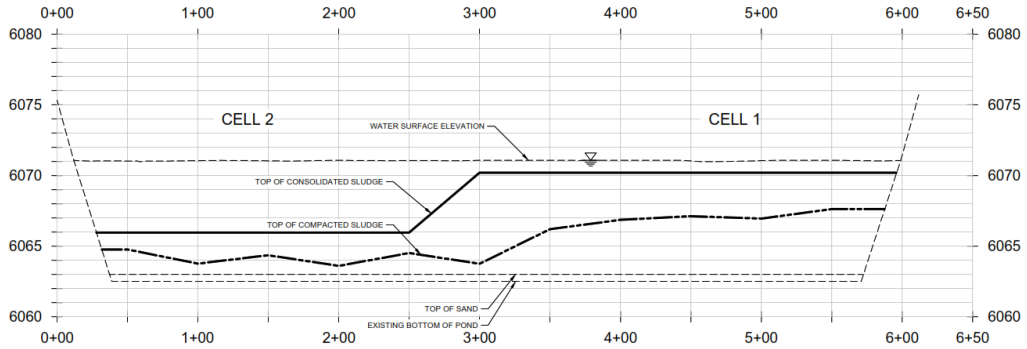


Figure 2

VII. Sludge Level Evaluation and Recommended Actions:

10 State Standards Chapter 85.31 provides recommendations regarding operations for aerated sludge digestion vessels. While the existing lagoons are not optimized aerated sludge digesters, they are functioning as aerated sludge holding basins and the operations group is operating them in general conformance to this referenced standard. According to the June 2023 Lagoon Sludge Volume Summary, the Teton Valley Regional Water Reclamation Facility aerated sludge holding lagoons require action when the sludge volume reaches 70% to allow time for action prior to exceeding a maximum sludge volume of 75% (in accordance with recommended 10 State Standards for Wastewater Facilities chapter 80 article 85.3).

Cell 1 Sludge Depth: 69 inches = 70% Full
Cell 2 Sludge Depth: 69 inches = 70% Full
Cell 3 Sludge Depth: 71 inches = 70% Full
Cell 4 Sludge Depth: 71 inches = 70% Full

1. Determine average sludge depths in each cell.

2. If average sludge depth of any cells corresponds to a sludge volume of 70% or greater, or where sludge beaching is present, the following steps will be taken for that cell:
   a. Determine if sludge capacity exists in an adjacent cell. If so, move sludge to the adjacent until both cells are under 70% capacity.
   b. If all cells are at capacity or sludge is unable to be moved between cells. Sludge from the cell(s) will be removed mechanically and disposed of according to federal and state requirements according to the process and timeline included in Paragraph VII.2.c below. Sludge will be removed to ensure a minimum of 50% capacity (see sludge depths above). This process will require city council approval and must follow state procurement laws. The estimated cost of full sludge removal from each lagoon is around $1,000,000.
   c. By December 15th, if sludge volumes indicate that sludge must be removed from any of the lagoons, the City will develop and implement a work plan, including the estimated sludge volumes to be removed. The City will develop the work plan no later than December 15th. The work plan shall indicate whether the City will use or dispose of sewage sludge, in accordance with the CWA, including the requirements of 40 C.F.R. Parts 258 and 503. Sludge removal will be conducted following selection of a general contractor and commence as quickly as environmental conditions allow for outdoor dewatering activities. This work will be completed no later than 18 months from the date the work plan is developed.

3. Lagoon Monitoring and Sludge Management Plan indicating that development of a lagoon sludge handling plan or plan to convert the lagoons for long term use will occur at a later date and in accordance with the terms of the consent decree.

APPENDIX C
COLLECTION SYSTEM MONITORING/SAMPLING PLAN

DATED: November 26, 2024
Created by: Jay T. Mazalewski

CITY OF DRIGGS
PUBLIC WORKS DEPARTMENT

I. Summary and Objectives:

The Teton Valley Regional Water Reclamation Facility (WWTP) NPDES permit requires the "Control of Undesirable Pollutants and Industrial Users" as shown below. This document is intended to help protect the current and future WWTP and for the city to comply with its NPDES permit by continuing to evaluate the collection system. This document is designed to assist the operator in identifying industrial users who may cause the city to violate Part II.C and help ensure the WWTP remains in compliance with Part II.C of the permit. The City will develop detailed SOPs and update detailed SOPs, the QAP, and O&M manuals, as needed, to further implement this Collection System Monitoring/Sampling Plan. Where dischargers are identified exceeding constituent trigger limits (See Consent Decree Paragraphs 17 and 18 and Section III.4.a of this Collection System Monitoring/Sampling Plan for trigger limits), discharger will be required to submit a corrective action plan to the city within two weeks of exceedance.

Part II.C of the NPDES Permit: Control of Undesirable Pollutants and Industrial Users

1. The permittee must require any industrial user discharging to its treatment works to comply with any applicable requirements of 40 C.F.R. Parts 403 through 471.

2. The permittee must not allow introduction of the following pollutants into the POTW:

a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (ºF) or 60 degrees Centigrade (ºC) using the test methods specified in 40 C.F.R. § 261.21.

b) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the POTW is specifically designed to accommodate such Discharges.

c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference.

d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

e) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 ºC (104 ºF) unless the Director of the Office of Water and Watersheds, upon request of the POTW, approves alternate temperature limits.

f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

i) Any pollutant which causes "Pass Through" or "Interference." See Part VI of the permit

II. New Industrial Users:

The City of Driggs will monitor potential sources of undesirable pollutants by monitoring new non-residential connections with the Industrial User Survey form.

1. The City of Driggs and City of Victor will require all new non-residential building permits to complete the industrial user survey, prior to issuance of a building permit.

2. The City of Driggs and City of Victor will require all new business registrations to complete the industrial user survey, prior to issuance of a business registration. Renewal business registrants will be required to disclose any changes to operations that would affect wastewater quantity or quality.

3. Completed surveys will be reviewed by each city to determine if additional information is required. Surveys should be reviewed by the Public Works Director's or the WWTP Responsible Charge Operator.

4. Completed surveys will be evaluated for compliance with the adopted pre-treatment ordinance and NPDES Permit Part II.C.

    a. Facilities/businesses that are in the following categories may be eliminated from further evaluations:
        i. Facility operation does not manufacture or produce a product on site and thus does not generate wastewater other than domestic use.
        ii. Facility operation is a dry process and does not generate wastewater other than domestic use.
        iii. Facility discharges non-domestic (non-industrial) wastewater only. Examples may include theaters, beauty shops, barber shops, retail stores, offices, and gas stations that are not also service stations.

iv. Facility discharge likely has minimal impact on the collection system or the treatment plant. Examples may include multi-family housing units, hotels, and motels.

b. If the survey indicates the use may produce undesirable pollutants, the cities of Driggs and Victor will;
   i. Conduct a follow up interview and site visit with the user to gain a better understanding of the potential waste stream; and
   ii. Consider (on a case-by-case basis) requiring user to monitor and test effluent

5. City of Victor will quarterly submit copies of new Industrial User Surveys to the Driggs City Clerk for review by the Driggs Public Works Director or Responsible Charge Operator for the wastewater treatment facility. Additionally, Victor will notify City of Driggs of any new significant industrial users prior to issuance of building permit of business registration.

6. The City of Driggs public works department will maintain a file of industrial user respondents and their completed surveys, this list will be updated annually, at a minimum.

III. Collection System Testing & Monitoring:

Monitoring the collection system at specific locations quarterly will inform the operator if seasonal fluctuations occur in the wastewater strength and in what service area they occur. This section outlines the collection system concentration monitoring program.

1. Testing will occur in February, May, July, and November. These months were chosen to best represent the seasonal fluctuations observed in the collection area.

2. The following locations will be tested. These locations were chosen as they are logical collection nodes, have flow meters, and are accessible year-round. Testing locations a, b and c capture all of the influent coming to the treatment facility.

   a. Driggs Huntsman Lagoon Lift Station - 1250 West Bates Road Driggs: This lift station discharges directly to the treatment plant. The collection area includes the Tributary Subdivision, Portions of Shoshoni Plains subdivision, areas west of Highway 33 and North of West Little Avenue, and the city airport.
   b. Driggs Main Lift Station – 60 South Main St Driggs: This lift station discharges directly to the treatment plant. The collection area includes areas east of Highway 33 from Ross Ave to Johson Ave, including all of Ski Hill Road. This collection area contains the majority of the original townsite.
   c. Driggs South Lift Station -1480S 500W Driggs: This lift station discharges directly to the treatment plant. The collection area includes all of the City of Victor effluent, including their

satellite systems and two of the City of Driggs satellite systems (satellite systems are connections to the collection system that are outside of the city limits).

d. Victor North Lift Station 6700S 500W: This lift station discharges to the Driggs South Lift Station. The collection area includes all of the City of Victor.

3. Tests shall be "grab" sample type tests. Samples will be tested for pH, Temperature, BOD, TSS and Ammonia (note these locations are outside and subject to cold weather temperatures). BOD, TSS and Ammonia samples will be sent to a certified lab, pH and temperature will be recorded at the time of sampling by the sampler.

4. Test results will be recorded and evaluated against the requirements in NPDES Permit Part II. C.

a. If the test indicate undesirable pollutants at concentrations above the criteria listed below, which represents the 2-times the design parameters for the current facility, the City will complete the actions as described in III.4.a.i and III.4.a.ii below. When the facility is upgraded and if this document is still applicable the criteria shall be adjusted to 2-times the upgraded facility design criteria.

BOD	> 500 mg/L;
TSS	> 400 mg/L;
Ammonia	> 70 mg/L;
pH	< 5 or >10;

i. The location will be re-tested at the soonest practical time but not later than seven days after the city receives the initial results.

ii. If re-test results confirm undesirable pollutants, City Engineer will determine if the increased loading is detrimental to the treatment works process or equipment and if there is a potential for permit violation. If the second sample result indicates levels above the trigger levels, the city will evaluate and address the potential source. The City will develop a standard operating procedure for how to determine and address collection system limit violations.

IV. City of Driggs - Effluent Monitoring:

Monitoring the collection system effluent (also the known as the influent at wastewater treatment facility) for Oil and Grease will occur in quarterly at the wastewater treatment facility as outlined in the Consent Decree.

1. If the average of two quarterly test results indicates Oil and Grease at concentrations above the criteria listed below;

Oil and Grease	> 100 mg/L;

a. Oil and Grease will be added to the list of undesirable pollutants tested in above in Collection System Testing and Monitoring Section III.4 at a concentration of:

Oil and Grease >150 mg/l

b. Be subject to the conditions outlined in Collection System Testing and Monitoring section of the Consent Decree (see Consent Decree Paragraphs 16–20).

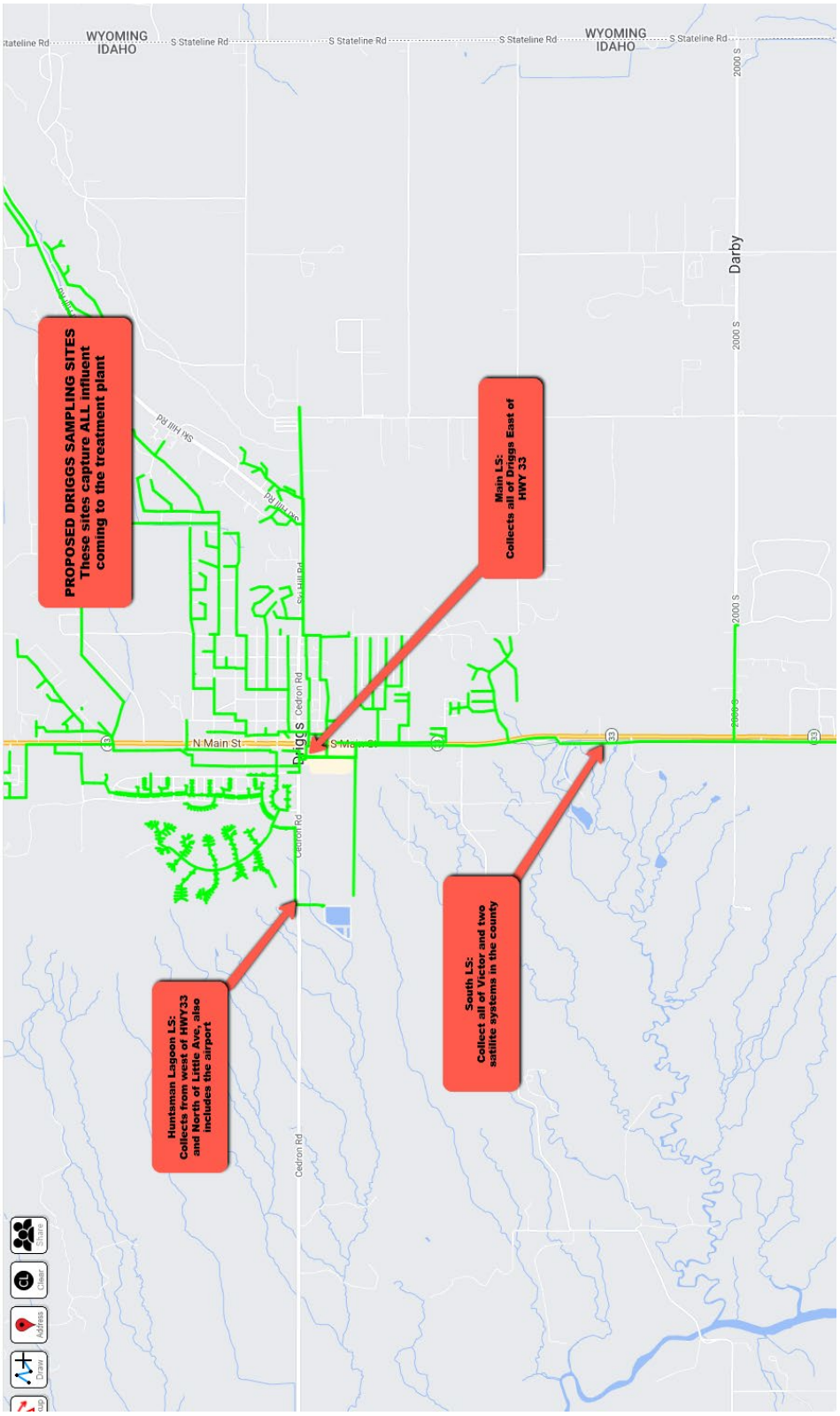
V. City of Victor Effluent Monitoring:

Monthly monitoring of the City of Victor effluent will assist both cities in understanding impact to the treatment facility. The Driggs South Lift Station will be used as a representative sample location for the City of Victor effluent.

1. Effluent from the City of Victor will be sampled 2 times/month, aligning with the 2 times monthly sampling at the WWTP. Samples shall be sent to a lab for BOD, TSS, and Ammonia. pH and temperature will be recorded in the field by the sampler.

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REPLY TO:

John T. Crowley

Attorn

[phone redacted]

[email redacted]

SMITHCURRIE OLES

December 20, 2024

VIA ELECTRONIC MAIL

Sam L. Angell
Hall Angell & Associates, LLP
[email redacted]

Re: Inter-City Agreement for Wastewater Treatment Services

Mr. Angell:

The City of Victor (Victor) has retained Smith Currie Oles to represent it in the matter involving the City of Driggs' Wastewater Treatment Plant (WWTP), the quarterly debt overpayments, and the WWTP operations expense audit. We understand that you represent the City of Driggs (Driggs) in these matters.

We are in receipt of a letter dated March 14, 2024 from Driggs' Mayor notifying Victor of Driggs' EPA violations, the resulting upgrades to the WWTP, and its apparent request to have Victor share in Driggs' costs of the upgrades (the "Letter"). This letter is Victor's response to that Letter, rejecting Driggs' erroneous interpretation of the 2011 Inter-City Agreement for Wastewater Treatment Services (the "Inter-City Agreement").

Victor demands the following: (1) for Driggs to perform its existing obligations under the Inter-City Agreement, including providing a WWTP capable of complying with the Discharge Permit at no additional cost to Victor; (2) to be reimbursed for the quarterly overpayments it made to Driggs' debt service related to the construction of the existing WWTP and trunk lines; (3) be reimbursed for its pro-rata share of the surplus of Driggs' wastewater fund derived from incidental revenue above costs; and (4) to move forward with a comprehensive audit of Driggs' WWTP operations expenses by Cooper Norman (Cooper).

I. Background

On October 13, 1999, Driggs and Victor executed an agreement whereby Driggs agreed to provide wastewater treatment services for Victor. Sometime in 2007 or 2008, Driggs commissioned an engineering report analyzing the design and construction of a new WWTP utilizing a membrane system. Sometime after that report was issued, Driggs decided to move forward with the design of the membrane system. Notably, at the time, the membrane system design was not utilized in cold climates such as where Driggs is located. Victor notified Driggs of its concerns with utilizing the unproven design. Driggs represented to Victor that the membrane design would be sufficient to treat the wastewater to legal standards.

The EPA issued aNPDES Permit (Discharge Permit) on November 4, 2010, becoming effective on January 1, 2011, to Driggs, and later extended it on October 14, 2015. Notably, after the Discharge Permit was issued, Driggs and Victor executed a subsequent Inter-City Agreement to replace the October 13, 1999 Agreement. In the 2011 Inter-City Agreement, Driggs promised to provide and operate a WWTP "capable of receiving and treating the anticipated wastewater from Victor". In exchange, Victor promised to pay Driggs its proportionate share of the cost to operate the plant and the debt service to construct the WWTP and Trunk Lines.

Victor has been overpaying Driggs for Driggs' debt service attributable to the WWTP costs and the Trunk Lines construction costs. Under Section 2.C of the Inter-City Agreement, the Cities agreed to make upgrades to the Trunk line. Driggs further agreed to "provide necessary funds for these upgrades of the Trunk Line through the [DEQ] Loan, with the debt service of any such increase specifically attributable to the Trunk Line to be born Victor and Driggs users pro-rata…" To date, Driggs has been billing over 100% of the cost attributable to the trunk Line upgrades for both cities without deducting its pro-rata share.

According to the Audit, adjustments to both the actual cost of the Trunk Line upgrades and the proportionate share of the debt service for the cost of such upgrades need to be made. In summary, Victor has been paying 100% of Driggs' debt service on a principal amount of $1,413,543 when it only costs the Cities $1,180,594.65 for those upgrades. Applying Victor's pro-rata share of 44.1% to the Trunk Line cost, the principal balance that Victor should be making debt service payments on is $520,162.17 before loan forgiveness. After loan forgiveness, the principal amount is $394,945.10. This is the principal amount attributable to the Trunk Line costs that Victor should be making quarterly debt service payments to Driggs.

Victor, in performing its payment obligations, reasonably relied on Driggs' representations on its share of both the debt service and the operational costs. Victor has performed its obligations, although has been overpaying Driggs on its share of the debt service as well as the operational costs. Such overpayments were caused by misrepresentations made by Driggs.

Unlike Victor, Driggs failed to perform its obligations under the Inter-City Agreement from the very start by not providing a WWTP capable of producing effluent in compliance with the Discharge Permit. The WWTP effluent never complied with the Discharge Permit, racking up over 3,700 EPA violations between November 2012 and June 2017. Consequently, in 2018, the EPA and Driggs entered into a Consent Agreement and Final Order effective April 26, 2018, to resolve the EPA violations.

Driggs and the EPA also entered into a Compliance and Consent Order to bring Driggs into compliance with the Discharge Permit. Under that Order, Driggs was obligated to identify modifications and corrective actions within 12 months to achieve compliance, complete construction of any modifications to the WWTP required to achieve compliance within 24 months, and achieve compliance with the Discharge Permit within 24 months. Driggs failed to perform all of these obligations.

On October 24, 2022, the US Department of Justice (US DOJ) filed a complaint against Driggs for thousands of violations of the Discharge Permit. These violations include discharging pollutants into Wood Creek, failing to sample the effluent at the frequencies required by the Discharge Permit, and failing to comply with the required chain of custody procedures. The US DOJ further asserted that Driggs continues to violate the Discharge Permit.

Driggs did not formally notify Victor of its inability to comply with the Discharge Permit until April 2024. More importantly, Driggs did not formally notify Victor that the WWTP did not comply with the Inter-City Agreement requirement that it would be "capable of receiving and treating anticipated wastewater from Victor".

This failure eliminated Victor's ability to find other means of treating its wastewater to lawful standards in a fiscally plausible manner. Had Driggs notified Victor in November 2012 of its EPA violations and the WWTP's design deficiencies, Victor could have terminated the Inter-City Agreement and constructed its own plant at a fraction of the cost required to build today. Instead, Driggs waited until April of this year to formally notify Victor that it would be required to construct a WWTP—

sparing Driggs the responsibility to foot all of its portion of the remaining debt service for the existing plant and trunk lines while also paying for the entire future WWTP. Given that Victor has been paying more than it's agreed to share of the debt service for the existing WWTP and Trunk Lines, combined with the exponential increase in construction costs since 2012, Driggs has taken any feasible way for Victor to build its own WWTP.

Now, believing that Victor is stuck between a rock and a hard spot, knowing that Victor does not have a WWTP or the means to finance a new WWTP, Driggs issued Victor the Letter on March 14, 2024. In that Letter, Driggs attempts to strong-arm Victor to pay for a substantial portion of the plant or terminate the Inter-City Agreement. Victor will do neither and will hold Driggs accountable if it continues to fail to perform its contractual obligations for reasons that follow:

II. Victor Will Not Pay Any Additional Money for the Upgraded WWTP or Terminate the Inter-City Agreement Because it is not Contractually Obligated to do so and Demands Driggs Perform its Contractual Obligations.

Driggs' interpretation of the Inter-City Agreement ignores the basis of the bargain of the Inter-City Agreement and Driggs' contractual obligations to Victor. Citing Section 3A of Inter-City Agreement, Driggs gave Victor three options regarding the cost allocation of designing and constructing the WWTP upgrades. Those options are, "1) sharing costs, 2) accepting proportionate pass-through costs, or 3) terminating the 2011 Inter-City Agreement…"

Under the Inter-City Agreement, Driggs is obligated to treat Victor's wastewater by both providing the WWTP and operating that plant in a manner that discharges water in conformance with the Discharge Permit. Under Section 1 of the Inter-City Agreement, Driggs is obligated to "bond for and pay all costs associated with reconstruction of the existing facility… Reconstruction of the existing Facility is projected to result in a facility that can service all the wastewater needs for both parties consistent with the study conducted by Aqua Engineering, Inc in 2009 which was the addendum to the earlier Nelson Engineering study…"

To the extent that Driggs interprets this obligation to exclude Driggs' obligation to lawfully treat and discharge Victor's wastewater, the recitals in the Agreement clarify that misconception. The second Recital states that Driggs "desires to provide a wastewater collection and treatment facility for Victor…" The fourth recital states, "Driggs will accept and treat the anticipated wastewater from Victor…"

The third recital states, the "Wastewater Facilities are presently being improved and will be of sufficient size and capable of receiving and treating the anticipated wastewater from Victor…".

These recitals read together with Driggs' obligations in section 1 of the Inter-City Agreement clarify Driggs' performance obligations. Driggs' contractual obligations imply that it will provide a WWTP and operate that plant in a manner that conforms to the Discharge Permit standards. Any other interpretation relieving Driggs of its obligation to treat the wastewater to lawful standards contravenes the basis of the bargain and leads to an absurd result. To date, Driggs has failed to lawfully treat the wastewater and is consequently in breach of the Inter-City Agreement.

The first two options in the Letter do not apply because the future upgrade is necessitated by Driggs' failure to provide a WWTP that conforms to the Inter-City Agreement. This failure constitutes a breach of contract. Any costs incurred by Victor due to Driggs' failure to provide a sufficient WWTP, including "capital improvements" to bring the WWTP into compliance with the Discharge Permit, would be compensable damages for which Driggs would be liable to Victor.

Unlike Driggs' inability to perform its contractual requirements, Victor has performed its contractual obligations albeit paying more for the services than it agreed to in the Inter-City Agreement. Driggs' assertion that Victor pay any amount of money for a new plant in addition to the existing WWTP after Driggs represented that the existing plant would be sufficient to meet EPA standards is both irrational, disingenuous at best, and certainly not based in contract.

The Inter-City Agreement does not obligate Victor to pay for a WWTP upgrade necessitated by a deficient design. It also does not require that Victor terminate the agreement because Driggs has not been capable of treating effluent to the Discharge Permit standards.

Victor is not liable to Driggs for "capital improvements" that will be made to the WWTP that according to representations made by Driggs both prior to the execution of the Inter-City Agreement and in the recitals of the Inter-City Agreement, was capable of lawfully treating the wastewater. Despite Driggs never fulfilling its obligations under the Inter-City Agreement, Victor has not demanded that Driggs refund all the money that Victor paid to Driggs. Victor simply demands that Driggs cure its breach at no additional cost to Victor.

III. Victor Overpaid the Debt Service Payments and Will Follow the Neutral Auditor's Recommendations in Making Future Payments

Cooper performed an audit of the WWTP debt and Driggs WWTP operations expenses (the Audit). The Audit concluded that "Victor has been overpaying on the debt related to the DEQ Loan for improvements made to the Wastewater Treatment Facility and trunk line upgrades". Victor demands reconciliation of the overpayments.

According to the Audit, based on Victor's wastewater flow being 44.1% of the total influent, Victor is responsible for 44.1% of the DEQ Loan repayment on the WWTP equating to $3,108,757.32, and $394,945.10 for Victor's portion of the trunk lines. The sum of Victor's total liability to Driggs for Driggs' DEQ Loan debt is $3,503,702.42.

According to the audit, under the Inter-City Agreement, Victor was obligated to pay Driggs $43,796.28 each quarter for 80 quarters (20 Years). Instead, Victor has been paying $51,412.00 each quarter for the last 36 quarters. Also, Victor should have started making payments in Q3 of 2016 but started making payments to Driggs in Q4 of 2015. Simply put, in reliance on Driggs' representations and records, Victor has overpaid Driggs for its DEQ Loan repayment by $405,554.76.

Victor is entitled to a lump sum reimbursement from Driggs for $405,554.76, but nevertheless offered to allocate the credit of $405,554.76 equally across its share of Driggs' remaining DEQ Loan repayment schedule. Driggs wrongfully refuses, without explanation, to acknowledge its liability in accepting the overpayments without reimbursing Victor either by a credit to the remaining payments or a lump sum payment. Notably, Cooper—a neutral auditor—recommended that Victor's remaining payments should reflect the credit. Victor retains the right to a lump sum payment for the full amount of over-payment.

If Driggs continues to refuse to adjust its records to reflect its received overpayments, then Driggs needs to explain why it is not obligated to issue either a lump sum or a quarterly credit to Driggs. If Driggs fails to explain its position before the next payment is due, Victor will assume that Driggs consents to the credit being applied evenly across the remaining payments and will pay an amount reflecting the quarterly credit.

IV. Victor is Entitled to Its Pro-Rata Share of Driggs' Wastewater Fund

Driggs faces foreseeable costs above its annual WWTP operations budget for FY 2025 expenses associated with EPA violation fines and engineering fees for designing a new WWTP. Despite this, Driggs publicly announced that it will not raise user rates. Presumably, Driggs plans on utilizing its approximately $5MM reserve account to pay for these expenses. Section 9 of the Inter-City Agreement "creates an equitable allocation with all revenue being delegated to repairs, replacement, and maintenance of the facilities and its components in proportion to that used by each party's users".

Given that Driggs is required to construct a new WWTP because its existing plant is insufficient to produce effluent to legal standards, and such insufficiency also constitutes a breach of the Inter-City Agreement, it is not equitable for Driggs to withhold Victor's pro-rata share of the surplus generated by the WWTP. The cost allocated between Driggs and Victor must be proportionate in accordance with both the Inter-City Agreement and Generally Accepted Accounting Principals (GAAP). Consequently, Victor is entitled to its pro-rata share of the surplus generated by wastewater treatment revenues. Victor demands an audit of Driggs' reserve funds to quantify the amount that Victor is entitled to.

V. Victor demands a Full Audit of Driggs' WWTP Operations Costs Because Driggs' Invoices Contain Numerous Discrepancies

Under the Inter-City Agreement, Victor is obligated to pay Driggs 44.1% of the operating costs of WWTP. Victor does not own, control, or otherwise operate the WWTP. That obligation and associated risks are allocated to Driggs. Consequently, Driggs is responsible for keeping accurate and transparent records reflecting its cost to operate the WWTP in accordance with GAAP. Driggs has failed in this regard, making it impossible for Victor to reconcile Driggs' invoices without an in-depth audit. Below are a few examples leading Victor to question the veracity of Driggs' invoices.

Driggs does not adequately differentiate between expenses incurred to operate and maintain its WWTP and its wastewater collection system. To the extent Driggs does, expenses to maintain Driggs' wastewater collections system are likely wrongfully allocated to the WWTP operation and maintenance account—counter to the GAAP and the Inter-City Agreement. Given Victor is responsible for 44.1% of the

WWTP operations costs, Driggs' failure is unfairly saddling Victor with Driggs' expenses to maintain its assets other than the WWTP.

For example, Driggs hired a contractor to operate its WWTP approximately two years ago. Driggs pays the contractor approximately $5,500.00 per month for operating and maintaining the WWTP. Those expenses are properly allocated to the WWTP account. According to Driggs' personnel, they spend little to no time operating or maintaining the WWTP since the contractor was hired. Driggs' WWTP operations account should have reduced Driggs' personnel cost allocations, yet allocation of those costs to the WWTP operations account remain consistent with quarters prior to Driggs utilizing contract labor, thus resulting in a total increase to operational costs by an amount roughly equal to the contractor expense. The only plausible explanation is that Driggs is allocating expenses associated with maintaining assets other than the WWTP to the WWTP account thereby inflating the WWTP operations and maintenance account.

A broad high-level analysis supports the inference that Driggs is misallocating wastewater collection expenses to the WWTP operating and maintenance fund. To put it in perspective, Victor's wastewater collection system utilizes four lift stations and Driggs' system utilizes 13 lift stations. Victor generally spends between $500,000 - $700,000 per year maintaining and operating its wastewater collection system whereas Driggs generally allocates approximately $400,000 in expenses to its wastewater collections account. Based on what Victor knows about operating and maintaining its own wastewater collection system, it would rationally expect to see Driggs allocate a substantial amount more than Victor because it requires more than three times the amount of work.

Because of Driggs' glaring billing discrepancies and lack of transparent record keeping across the board, Victor cannot reconcile Driggs' accounts reflected in its invoices to Victor for operating and maintaining the WWTP. Victor demands that Driggs make its financial records available and comply with an in-depth audit. Victor proposes using Cooper for the audit as Cooper is familiar with Driggs' financial records as they pertain to the WWTP.

VI. Conclusion

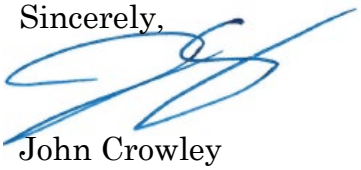
Driggs has a long history of misrepresenting costs, misrepresenting effluent samples to the EPA, and generally misleading various entities as a means to limit its

liability. Victor is rightfully concerned that Driggs' practices have led it to pay Driggs amounts in excess of its payment obligations under the Inter-City Agreement. Victor will perform its duties to its constituents, refuse to pay more than it agreed to under the Inter-City Agreement, and require reimbursement from Driggs for all overpayments.

Both Cities owe a duty to the public to be fiscally responsible. Victor does not wish to saddle its constituents with unnecessary litigation expenses if it does not have to and is willing to continue to work with Driggs in resolving these issues out of court. The relative location and size of both Cities enables the public to benefit from economies of scale. Citizens of both Cities will not benefit from each City paying for separate WWTPs. Victor encourages Driggs to comply with its demands and have a transparent discussion about the issues so both Cities can capitalize on our shared interest.

All rights reserved.

Sincerely,



John Crowley

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Blake G. Hall
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February 11, 2025

sent via email: [email redacted]

John T Crowley, Esq.
Smith Currie Oles
2700 Marquis One Tower
[address redacted] NE
Atlanta, GA 30303

RE: Inter-City Agreement for Wastewater Treatment Services

Dear Mr. Crowley,

The City of Driggs is in receipt of your December 20, 2024, letter which you claim was written in response to the March 14, 2024, letter from the City of Driggs. I wish to clarify at the outset that Driggs already received a response to that March 14, 2024 letter. On July 1, 2024, Mayor Frohlich formally notified Driggs in writing that:

> On June 26, 2024, after careful consideration of various alternatives and extensive discussions, the Victor City Council decided not to proceed with the construction of a separate wastewater treatment plant for our city.
>
> We recognize the ongoing efforts and investments Driggs is making in its facility. As a result of our decision, we propose to continue our existing arrangement of sending Victor's wastewater to Driggs for treatment. Given this development, we believe it is in the best interest of both our communities to renegotiate our current agreement. We are eager to discuss terms that will be mutually beneficial, ensuring fair compensation for Driggs while maintaining affordable services for Victor's residents.

Driggs has relied upon Victor's decision to continue to be included as a customer for purposes of planning the current WWTP upgrades. As such, Driggs has commenced engineering and design for construction of a WWTP upgrade that has sufficient future capacity for both Driggs and Victor. Driggs plans to continue under that direction from Mayor Frohlich, unless informed otherwise in writing by the City of Victor.

Your letter has been received in the spirit in which it was written. It is somewhat troubling that you felt it necessary to make accusations of "misrepresentation of costs", "billing discrepancies", and "breach" of the Inter-City Agreement. These allegations are not true. We note that at the conclusion of your letter you indicate that "Victor does not want to saddle its constituents with unnecessary litigation expenses" and that Victor is "willing to continue to

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work with Driggs in resolving these issues out of court." We agree that it would be unwise for Victor to commence litigation against Driggs. In a spirit of conciliation, please consider this letter a brief response to your demands and an invitation from Driggs to have a meeting between necessary officials from both cities to discuss these issues.

HISTORY

A complete history of events relevant to this matter cannot realistically be included in this letter. It will require an in-person comprehensive review of letters, spreadsheets, maps, technical memoranda, engineering plans, contracts, invoices, and other documents. We are providing much of this information with this letter *via* Dropbox link. Notwithstanding, please consider the following as a brief response to your demands.

Victor and Driggs indeed have a working relationship for the treatment of wastewater dating from the late 1990's. Around 2010 Driggs was in the process of reworking its WWTP. Driggs was and still is the sole holder of the NPDES permit with DEQ, and as such, is ultimately responsible for ensuring compliance with the permit. During the course of the design of the 2011 WWTP it became apparent that the trunk line from Victor to Driggs was too flat and otherwise incapable of handling the wastewater flow from Victor to Driggs. Sunrise Engineering (Victor's Engineer) issued a technical memorandum on June 18, 2010 (prior to the commencement of the 2011 WWTP upgrades) finding that it was increased flow from Victor which necessitated trunk line upgrades:

> During normal operating conditions the total amount of flow (from Victor) in the interceptor is approximately 570 gallons per minute . . Unfortunately, when experiencing peak flows during the summer months . . . the total flow in the interceptor is approximately 610 gallons per minute which is above the design capacity of the flat sections of the interceptor.

In the simplest of terms, in 2010 Victor and Driggs knew that the trunk line needed upgraded. The cost of this upgrade was Victor's responsibility as the sole purpose of the trunk line was to deliver Victor's wastewater to Driggs' treatment system. Because Victor was not the permit holder Victor could not get a loan from DEQ for needed upgrades. Driggs offered to secure a loan from DEQ for the amount necessary to complete the trunk line upgrades. A loan of approximately $1.4 Million was secured for trunk line upgrades. The trunk line upgrades were implemented. The parties at the time understood completely that this capital investment was Victor's responsibility to repay. A repayment plan was put in place, Driggs sent out quarterly debt service bills, and Victor has paid the quarterly debt service without challenge for more than a decade.

The current dispute, raised by Victor, appears to be the result of a fundamental misunderstanding of the original agreement for repayment of the $1.4 Million DEQ trunk line loan. Victor's error in understanding is this – the parties have never intended that the $1.4 Million DEQ loan be reimbursed by Victor by applying the 44.1% flow ratio as the

"percentage" of repayment due from Victor to Driggs. That "44.1% pro-rata" flow ratio is derived from the percentage of flow reaching the treatment plant (not the flow in the trunk line) and applies to the flow charge assessed to Victor under other provisions of the Inter-City Agreement. As for the trunk line upgrade, the parties intended that all of the $1.4 Million DEQ loan would be paid by Victor. The express wording of the Inter-City Agreement signed in 2011 memorialized that understanding in writing, and the actions of the parties over the last decade demonstrate confirmation and implementation of that understanding.

I. Driggs has performed all contractual obligations owed to Victor.

Driggs is not in breach of the Inter-City Agreement. There is absolutely no requirement under the express language of the Inter-City Agreement that Driggs must comply with the NPDES permit as part of its obligations *owed to Victor*. The recitals do not impose any such requirement. Driggs' only duty owed to the City of Victor was to accept Victor's wastewater. Every gallon of Victor's wastewater has been accepted by Driggs without question since 2011. Victor has received everything that it bargained for as part of this agreement. That Driggs has struggled to ensure that the 2011 plant could meet EPA regulations has in no way altered Driggs' commitment to accept Victor's wastewater every hour of every day of every year since 2011. Victor's threat arising from allegations of violations of the NPDES permit reveals a short-sighted understanding on the part of Victor of the difficult challenges faced by Driggs to ensure that all of the wastewater from both cities has been properly treated. Driggs does not feel that it is necessary to expend any further resources to respond to the allegations contained in Victor's demand letter on this point.

Driggs currently finds it necessary to complete WWTP upgrades. WWTP upgrades will be done according to the Consent Decree entered between the City of Driggs and EPA. The Consent Decree has been made public. Victor has indicated that it desires to continue sending its wastewater to Driggs. Victor has already acknowledged that a new "inter-city" agreement is necessary to govern the relationship between Driggs and Victor going forward.

II. Victor has not overpaid on the debt service for the trunk line loan.

Paragraph 2(C) of the Inter-City Agreement governs the parties' agreement related to "upgrades" to the trunk line. It provides:

> 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 born by the Victor and Driggs Users pro-rata based on the ratio set forth in section 5 below.

You will note that prior to signing the 2011 Inter-City Agreement it was clear that Driggs and Victor had acknowledged the need for trunk line upgrades, agreed that Driggs would get the DEQ loan for the upgrades, and decided upon the method of repayment of the loan. Section 5 of the Inter-City Agreement provides:

> . . . 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.

The definition of the "trunk line" is included in paragraph 2 of the Agreement. It includes portions of the trunk line on the Driggs side (North of manhole 35T) and the Victor side (South of manhole 35T). The trunk line extended North to its "end point" at the Driggs sewer pressure line at the South Lift Station, as indicated on the Sunrise Engineering plans from 2010. Driggs acknowledges that portions of the trunk line on both sides of manhole 35T (Victor's side and Driggs' side) were upgraded in 2011. As per the Sunrise Engineering Technical Memorandum on June 18, 2010, the flow from Victor caused the total flows to exceed the capacity of the trunk line. Thus, the ratio . . . *"which has contributed to the need for a larger line"* of flow defined as the "ERU's each party has connected to the Trunk Line" in paragraph 5 of the Inter-City Agreement, as of 2011, was 100% Victor's flow. The ratio established by the Inter-City Agreement was to be based on the flow added to the "Trunk Line". Not on the ratio of flow entering the treatment plant. This distinction is clear in the express wording of the agreement. The Inter-City Agreement specifically provides that the ratio would be calculated based on flows "which have contributed to the need for a larger Trunk Line".

This is where Cooper Norman got off the rails in terms of the premise of its audit. On page four (4) of the Cooper Norman audit, the auditor assumed that the ratio to be used to calculate reimbursement of the $1.4 Million DEQ trunk line loan was the "44.1%" flow ratio. Driggs does not know how the auditor reached that conclusion, but it is patently incorrect. The "44.1%" flow ratio is the proportion of flow contributed by Victor *to the treatment plant.* It is not the "number of equivalent residential units each party has connected to the Trunk Line" – the standard to determine the appropriate ratio for repayment for the trunk line DEQ loan. There is a reason for the different ratios. The flows from Driggs that enter the treatment plant do not travel through the trunk line. There is no justification to burden Driggs residents with upgrades to the trunk line when the trunk line's purpose is to deliver wastewater from Victor to Driggs. Cooper Norman used the incorrect flow ratio in its audit. This error has caused Victor to believe that it has overpaid the debt service on the DEQ trunk line loan.

As it stands, the cost of the original upsizing of the trunk line designed in 2010 and implemented as part of the overall 2011 WWTP upgrade was caused by the flows from Victor (see, Sunrise Engineering Technical Memorandum) and must be reimbursed by Victor. The "44.1% pro rata share" referenced in your letter does not apply to the trunk line DEQ loan repayment. Instead, it refers to the ratio of flows arriving at the treatment plant attributed to

Victor. This ratio is important (for a completely unrelated reason) as it is used to calculate the "Treatment Fees" listed in paragraph 8 of the Inter-City Agreement, and the cost sharing of capital improvements referenced in paragraph 3(A).

On June 22, 2015, Driggs Mayor Hyrum Johnson sent a letter to Victor Mayor Zachary Smith. The purpose of that letter was to announce the completion of the WWTP, report that DEQ was issuing its loan forgiveness, and to outline Victor's repayment of the $1.4 Million DEQ loan for trunk line upgrades. The letter included a table documenting the total loan ($10,500,000.00), the "City of Victor's" portion of the loan ($1,413,543.00); Victor's portion of the DEQ loan forgiveness ($340,000.00); Victor's remaining share of the debt service to be repaid ($1,073,264.00), and Victor's annual payment due to Driggs of $53,663.00. The wording in the table refers to the $53,663.00 figure as the "*Victor line project payment*." This letter was received by Victor without any objection. It further memorializes in writing the understanding of the respective Mayors of Driggs and Victor that Victor was responsible for repayment of all of the "*Victor line project*" loan.

The June 22, 2015, letter also broke down the WWTP flow share payment that Victor would owe to Driggs ($151,985.00). Which, when added to the annual debt service of $53,663.00 totaled $205,648.00. This number was used to create a "quarterly" payment due from Victor to Driggs of $51,412.00. Victor has made this payment without any objection or comment quarterly since 2015.

In sum, the debt service billed to Victor since the beginning of the repayment of the DEQ loan for trunk line upgrades has been, and continues to be, correct. Driggs does not owe Victor any reimbursement for quarterly "overpayments".

III. Victor is not entitled to a pro rata share of Driggs' Wastewater fund.

There are no surplus "wastewater funds" at the City of Driggs subject to reimbursement to the City of Victor. The premise that there might be any such funds is based largely on the faulty understanding that Victor has "over paid" its quarterly debt service assessment. As set forth above, this is not correct.

IV. Comprehensive Audit.

The City of Driggs denies that there has been any misallocation of wastewater collection expenses to the treatment plant. The City of Driggs tracks manpower, expenses, *etc.*, separately for the collections system and treatment plant through two separate categories in the wastewater fund (52-80 and 52-85). The argument that Driggs has improperly assessed costs associated with hiring an outside contractor to assist with plant operations is untrue. Driggs properly categorizes its expenses and delineates between the "collection system" and the "wastewater fund." Driggs is willing to go through this information with personnel from Victor to answer any questions. Driggs' proposal would be that if there remain questions after an open book meeting, then Driggs may consider sharing in the expense of a full audit. However, given

the recent biased audit performed by Cooper Norman, Driggs will require that the audit be completed by an independent firm.

CONCLUSION

The City of Driggs does not owe any money to Victor. However, Driggs understands that an in-depth review of the facts, history, and terms of the Inter-City Agreement may be helpful to all parties to get on the same page, resolve concerns, and work toward finalizing a new agreement for wastewater treatment services. As part of this response, Driggs has included a new proposed agreement for a "customer" based approach with Victor for the provision of wastewater treatment services. A copy of Driggs' proposal is attached. Considering impending deadlines which govern the design and construction of Driggs' WWTP upgrades, Driggs will give Victor (30) days to review and provide input on the proposed agreement. It will then need to be finalized and signed by all parties by March 31, 2025.

Once you have had a chance to review this response and the proposed agreement, please have Victor reach out directly to Mayor Christensen to arrange a meeting between the appropriate city officials.

Sincerely,

Sam L. Angell

Enclosures: *Via* Dropbox Link

Cc: Mayor Frohlich

REPLY TO:

John T. Crowley
Attorn
[phone redacted]
[email redacted]

SMITHCURRIE OLES

March 21, 2025

Via Email

RE: Response to February 11, 2025 Letter

Sam:

This letter is in response to your letter dated February 11, 2025, responding to the City of Victor's (Victor) letter dated December 20, 2024 and recent communications between Victor and the City of Driggs (Driggs). This letter is not intended to address all of Driggs' stated position on the issues as our previous December 20, 2024, letter stands.

Victor was pleased that Driggs agreed to meet to resolve the issues regarding the audit and to proceed with the independent auditor—Cooper Norman. While most of the second meeting was productive, Victor is concerned with Driggs' position that it will not proceed with the **comprehensive** audit and finds it necessary to restate Driggs' audit obligations under the 2011 Inter-City Agreement. This letter also addresses the statement made in Your Letter regarding Driggs' reliance on Victor's June 26, 2024 proposal to continue the existing arrangement and renegotiate the current Inter-City Agreement.

I. The Audit

Victor is optimistic that Driggs' will provide ECIPDA information, single audit(s) for the DEQ loan, lift station documents, an amortization schedule, and DEQ closing documents as stated in the March 19, 2025 meeting. But, Victor is concerned that Driggs will not cooperate with the continuation of the comprehensive audit as previously agreed in the Inter-City Agreement. Driggs indicated that it would not participate in a continuation of a comprehensive audit at the conclusion of the meeting. This is contrary to the basic principles of government transparency, the 2011 Inter-City Agreement audit provision, and the initial audit engagement letter with Cooper Norman.

From Victor's perspective, the purpose of the audit provision in the Inter-City Agreement is to ensure that both Cities comply with the payment terms of the Agreement and reconcile accounts if there are discrepancies between monies paid and obligations under the Inter-City Agreement. This flows both ways and is for the benefit of the citizens of both Cities. Compliance with Section 8.D of the Inter-City Agreement assures the citizens that the Cities will be transparent and fair—values shared by both current Administrations. That provision is as follows:

> 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.

As far as Victor is aware, an audit has not been performed at any time since the Inter-City Agreement was executed despite the requirement for a yearly audit. Victor owes it to its constituents to ensure that a comprehensive audit is complete and accurate. The initial description of the scope of the agreed-to audit is addressed in Cooper Norman's engagement letter and is consistent with a comprehensive audit. That scope is as follows:

> Dear Mr. Frohlich and Ms. Christensen:
>
> Thank you for the opportunity to propose our litigation support services ("Expert Services"). This letter ("Agreement") will serve to confirm our understanding of the terms, objectives, and initial description of this engagement. Cooper Norman, PLLC ("Cooper Norman") expects the initial elements of work to include a financial and compliance review of the Inter-City Agreement for Wastewater Treatment Services between the City of Driggs and the City of Victor ("Clients") dated September 30, 2011. Cooper Norman will also examine the internal accounting, cost allocation, and purchasing controls and related procedures performed by the City of Driggs.

Victor understands that Driggs is frustrated with the audit process and does not believe that a comprehensive audit is necessary. Victor disagrees with this opinion as it is contrary to the Inter-City Agreement, the engagement letter with Cooper Norman, and the fundamental principles of transparency in government. The audit will be conducted with or without Driggs' participation, but it is to Driggs' benefit to participate in the audit. Victor seeks assurance that Driggs will comply with and participate in the comprehensive audit.

II. Driggs' Reliance

Your Letter references Victor's letter dated June 26, 2024, in support of the statement that "Driggs has relied upon Victor's decision to continue to be included as a customer for purposes of planning the current WWTP upgrades." Driggs' reliance on Victor's statement made within an unreasonably limited timeframe coupled with the delay in issuing a proposed agreement that currently lacks essential payment terms is unreasonable.

Victor understands that the Department of Justice requires Driggs to provide an answer as to whether Driggs will treat Victor's wastewater by April 1. Given this limited timeframe, ongoing WWTP design activities, and Driggs need to execute the Consent Decree, it is important to put Victor's June 26, 2024, letter into the proper context.

Victor's statement was made without adequate time to properly assess all options. Driggs knew it would construct a new WWTP some time in 2018. Had Victor been formally notified of the need for the new WWTP facility, it could have made other arrangements and would likely have built its own WWTP. It certainly would have had adequate time to make a prudent decision.

Instead, on numerous occasions during 2023 and 2024, Driggs' staff communicated to Victor that it had through the Summer of 2024 to make a decision as to whether to continue the relationship with Driggs. That timeframe was reduced on March 14, 2024, when Driggs notified Victor that it had until April 11, 2024 to make a decision.

Although Driggs, upon Victor's protest, agreed to extend the deadline until June 26, 2024, this timeframe was not sufficient to consider all variables required to make a prudent decision including incurring multi-millions of dollars in debt, purchasing land suitable for WWTP, and engaging in studies to determine if a potential site is suitable for a WWTP. Victor made its assessment based on careful consideration of facts it knew within the unreasonably and unnecessary limited amount of time.

In a letter dated April 18, 2024, Driggs told Victor it would provide a proposed agreement imminently. When the proposed agreement was not issued, Victor followed up multiple times. Finally, on February 12, 2025, Driggs issued a proposed agreement excluding some essential payment terms.

Victor's proposal to "continue our existing arrangement of sending Victor's wastewater to Driggs for treatment" was made on premise that the terms of the agreement would be "mutually beneficial, ensuring fair compensation for Driggs while maintaining affordable services for Victor's residents". The essential terms that are included in the proposed agreement are beneficial to Driggs but are not beneficial or affordable for Victor's citizens. Consequently, Victor is forced to continue to explore its options and asks Driggs for adequate time to determine if building its own WWTP is both possible and in the best interests of its citizens.

Victor understands the pressures that the Department of Justice is putting on Driggs and will do the best it can to accelerate the process to a final decision. In the interest of time, Victor would like to negotiate an agreement with Driggs in parallel with exploring its options, but at a minimum needs all essential payment terms before negotiations can proceed.

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Sincerely,

SMITH CURRIE OLES LLP



John T. Crowley
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