Electronically Filed
3/5/2026 12:34 PM
Seventh Judicial District, Teton County
Kim Keeley, Clerk of the Court
By: Susan Hill, Deputy Clerk

Jeffrey D. Brunson, ISB No. 6996
Robert B. Knudsen, ISB No. 11172
Beard St. Clair Gaffney PA
[address redacted]
[address redacted]
Telephone: [phone redacted]
Facsimile: [phone redacted]
Email: [email redacted]
[email redacted]

Attorneys for Plaintiff

DISTRICT COURT SEVENTH JUDICIAL DISTRICT TETON COUNTY IDAHO

CITY OF VICTOR, a political subdivision of the State of Idaho, Plaintiff, vs. CITY OF DRIGGS, a political subdivision of the State of Idaho, Defendant.	Case No.: CV41-26-0062 COMPLAINT AND DEMAND FOR JURY TRIAL Boyce, Steven W

Plaintiff City of Victor ("Victor"), by and through its undersigned counsel of record, and hereby files against Defendant City of Driggs ("Driggs") this Complaint as follows:

PARTIES

1. The Plaintiff, City of Victor, is a political subdivision of the State of Idaho in Teton County Idaho.

2. The Defendant, City of Driggs, is a political subdivision of the State of Idaho in Teton County Idaho.

JURISDICTION AND VENUE

3. The Court has subject matter over this action pursuant to Idaho Code Section 5-514.

4. Although venue is allowed for in Teton County Idaho pursuant to Idaho Code Section 5-404, pursuant to Idaho Rule of Civil Procedure 40.1 there is reason to believe that an impartial trial cannot be had in Teton County Idaho and the ends of justice would be promoted by a change of venue.

5. The amount in controversy exceeds $10,000.00; therefore, jurisdiction is proper in district court.

FACTUAL ALLEGATIONS

6. On October 13, 1999, Driggs and Victor executed an agreement (the "1999 Agreement") whereby Driggs agreed to provide a wastewater treatment plant and wastewater treatment services for Victor, in exchange for Victor sharing in some of the costs of the treatment with Driggs.

7. Driggs' Wastewater Treatment Plant was insufficient to treat the water to the US Environmental Quality Agency (EPA), Idaho Department of Environmental Quality (IDEQ), and the National Pollutant Discharge Elimination System Permit (NPDES Permit) standards (hereinafter collectively referred to as "Legal Standards").

8. As a result of NPDES Permit violations, in 2006, Driggs commissioned an engineering report analyzing the design and construction of an upgraded wastewater treatment plant (WWTP) utilizing a multi-stage activated biological process as means to treat wastewater.

9. At the time of the report, multi-stage activated biological processes (the "Unproven System") were not utilized and also untested in cold weather climates, such as the climate in Driggs.

10. Victor brought concerns to Driggs about utilizing the Unproven System in Driggs' cold climate.

11. In response, Driggs represented to Victor that the Unproven Design would be sufficient to treat the wastewater to Legal Standards.

12. Soon after the report was issued, Driggs unilaterally decided, without the consent of Victor, to enter into an agreement with Aqua Engineering to design a WWTP that utilized the Unproven System.

13. Driggs continued to violate the NPDES permit through the duration of design and construction of the upgraded WWTP.

14. On or about 2013, Driggs signed an agreement with a contractor to construct an upgraded WWTP that utilized the Unproven System.

15. Construction and commissioning of the upgraded WWTP was completed during 2016.

16. The EPA issued Driggs NPDES Permit No. ID-0020141 (the "NPDES Permit") to operate the upgraded WWTP on November 4, 2010, which became effective on January 1, 2011.

17. The EPA later transferred authority to administer and enforce the NPDES permit to IDEQ.

18. Driggs' discharges from the WWTP are subject to the requirements of its NPDES Permit. Driggs' 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.

19. The water quality standards mandated by the NPDES Permit have not changed significantly since the EPA initially issued Driggs the NPDES Permit in 2010.

20. 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.

The 2011 Inter-City Agreement

21. After the NPDES Permit was issued, Driggs and Victor entered into a subsequent 2011 Inter-City Agreement For Wastewater Treatment Services (the "Inter-City Agreement") to replace the 1999 Agreement. A true and accurate copy of the Inter-City Agreement is attached as Exhibit A.

22. What is believed to be a true and accurate copy of page 7, which is understood to have become separated from the complete Inter-City Agreement at some point, is attached as Exhibit B.

23. Under Section 13 of the Inter-City Agreement, the Inter-City 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…."

24. Under the Inter-City Agreement, Driggs promised to accept, convey, and treat the wastewater provided to it from Victor using the upgraded WWTP.

25. In exchange, Victor promised to reimburse its pro-rata share of the debt service to design and construct the Upgraded WWTP to Driggs, as well as its pro-rata share of operations and maintenance (O&M) costs to operate any upkeep the upgraded WWTP.

26. Victor's flow contributes to approximately 44.1% of the total WWTP influent.

27. Under the Inter-City Agreement, Driggs is obligated to treat Victor's wastewater by both providing the WWTP and operating the WWTP in a manner that treats and discharges treated effluent in conformance with Legal Standards.

28. The second recital of the Inter-City Agreement states that Driggs "desires to provide a wastewater collection and treatment facility for Victor and the surrounding area. . . ."

29. The third recital of the Inter-City Agreement states that the "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. . . ." (emphasis added).

30. The fourth recital of the Inter-City Agreement states that "Driggs will accept and treat the anticipated wastewater from Victor and the surrounding regional area. . . ." (emphasis added).

31. Section 1 of the Inter-City Agreement obligated Driggs to "bond for and pay all costs associated with reconstruction of the existing facility. . .[r]econstruction of the existing facility is projected to result in a facility that can service all the wastewater needs for both parties. . . ."

Driggs' Continued Violations of the NPDES Permit Under the 2011 Inter-City Agreement

32. The upgraded WWTP was never capable of treating the wastewater to Legal Standards.

33. Driggs did not seek relief from the WWTP Engineer of Record or from the Contractor for the WWTP's inability to comply with the NPDES permit.

34. Driggs improperly discharged and continues to improperly discharge treated wastewater into Woods Creek.

35. Woods Creek flows downstream into the Teton River, Henry's Fork, the Snake River, the Columbia River, and ultimately ends in the Pacific Ocean.

36. Any improperly treated wastewater that enters Woods Creek also pollutes the downstream waterways.

37. The WWTP's inability to treat the wastewater to legal standards was also caused by Driggs' inability to properly operate the WWTP.

38. Driggs is a perennial polluter that violates the NPDES Permit's standards, the Clean Water Act, and Idaho law on a regular basis by discharging polluted effluent into Woods Creek.

39. Driggs failed in its duties under the Agreement to comply with Legal Standards in discharging treated wastewater into Woods Creek.

40. Treated wastewater released from the WWTP never complied with the requirements of the NPDES Permit and racked up over 3,700 EPA violations between November 2012 and June 2017 alone and has continued to rack up violations to present day.

41. According to the Idaho Conservation League, Driggs' WWTP was the second worst polluting facility out of all the WWTPs in Idaho from 2014-2016.

42. According to the Idaho Conservation League, Driggs' WWTP was the third worst polluting facility out of all the WWTPs in Idaho from 2015-2018.

43. According to the Idaho Conservation League, Driggs' WWTP was the worst polluting facility out of all the WWTPs in Idaho from 2017-2019.

44. The EPA and Driggs entered into a Consent Agreement and Final Order effective April 16, 2018 (the "2018 Consent Agreement"), to resolve the numerous EPA violations and bring Driggs into compliance with the NPDES Permit.

45. Under the 2018 Consent Agreement, 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 NPDES Permit within 24 months.

46. Driggs ultimately failed to perform all of these obligations.

47. Sometime in 2020 or 2021, IDEQ informally offered Driggs an approximately $20,000,000 loan to upgrade its WWTP to comply with the NPDES permit, of which the total amount of the loan was to be forgiven.

48. Driggs did not notify or otherwise consult with Victor regarding the IDEQ loan.

49. Driggs inexplicably declined to apply for the loan, refused to upgrade the WWTP, and recklessly and intentionally continued to pollute Woods Creek and the Teton River.

50. According to the Idaho Conservation League, Driggs' WWTP was again the worst polluting facility out of all the WWTPs in Idaho from 2021-2023.

51. As a result of Driggs' continued violations, on October 24, 2022, the US Department of Justice ("US DOJ") filed a complaint against Driggs in Federal Court for thousands of violations of the Discharge Permit and seeking over $160 Million in damages.

52. These violations include discharging pollutants into Wood Creek, failing to sample the effluent at the frequencies required by the NPDES Permit, and failing to comply with the required water sample chain of custody procedures.

53. As a result of Driggs' continued violations of the NPDES Permit and the 2018 Consent Agreement, the US DOJ further asserted that Driggs continues to violate the Clean Water Act.

54. Driggs' WWTP was the second worst polluting facility out of all the WWTPs in Idaho during 2024.

55. On or about January 15, 2025, the USDOJ and Driggs entered into another Consent Decree (the "2025 Consent Decree").

56. The objective of the 2025 Consent Decree was 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 effluent limitations established in its NPDES Permit and eliminating non-effluent NPDES Permit violations."

57. Under the 2025 Consent Decree, Driggs was required to upgrade the existing WWTP.

58. Per the terms of the 2025 Consent Decree, Driggs was also required to submit quarterly reports that included, among other things, effluent sampling and discharge monitoring results to the US DOJ Environmental and Natural Resource Division.

59. According to the May 1, 2025 Quarterly Report, Driggs violated the Consent Decree by failing to timely submit the Quality Assurance Plan to the EPA and US DOJ; failing to timely submit the Preliminary Engineering Report; and failing to implement the Collection

System Monitoring, Influent Monitoring, and Lagoon Effluent Monitoring sampling requirements for the months of February, March, and April, 2025.

60. According to the May 1, 2025 Quarterly Report, Driggs continued to exceed the monthly and daily ammonia limits, further polluting Woods Creek and downstream waterways.

61. According to the July 31, 2025 Quarterly Report, Driggs violated the Consent Decree by incorrectly sampling composite samples multiple times.

62. According to the July 31, 2025 Quarterly Report, Driggs continued to exceed the monthly and daily ammonia limits, further polluting Woods Creek and downstream waterways.

63. As of the October 30, 2025 Quarterly Report, Driggs continues to exceed the monthly and daily ammonia limits, further polluting Woods Creek and the Teton River.

64. Driggs did not formally notify Victor of its inability to comply with the Discharge Permit or the 2018 Consent Agreement until April 2024.

65. Driggs has not notified Victor of its inability to comply with the 2025 Consent Decree.

66. Driggs has failed to uphold its end of the Inter-City Agreement requiring it to treat Victor's wastewater in conformance with Legal Standards.

Victor's Overpayment of the Operating Costs and Debt Service Under the 2011 Inter-City Agreement

67. Under Section 1 of the Inter-City Agreement, Driggs promised to "bond for and pay all cost associated with reconstruction of the existing facility…."

68. Section 1 of the Inter-City Agreement further states, "[t]he debt service to be passed through to the users of Victor shall be from this bond, and the 1999 sewer reconstruction bond…"

69. Section 1 of the Inter-City Agreement does not quantify the amount of "debt service" for which Victor's users are responsible. Driggs has been assessing the debt service pro-rata based on the amount of wastewater flow it receives from Victor, which is 44.1% of the total WWTP influent.

70. In Section 2(C) of the Inter-City Agreement, Victor and Driggs agreed to make upgrades to the Trunk Line, which is a large sewer pipe that connects Victor's wastewater collection system to Driggs' WWTP.

71. Pursuant to Section 2(C) of the Inter-City Agreement, 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 borne by Victor and Driggs users pro-rata based on the ration set forth in section 5 below." (emphasis added).

72. Section 5 of the Inter-City Agreement provides for two different means of quantifying the "ration" referenced in Section 2 of the Agreement.

73. The first method of quantifying the ration under Section 5 is as follows: "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."

74. The second method identified in Section 5 is as follows: "If the parties hereto are not able to agree on the proportional ratios, an in stream 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."

75. The parties never agreed to use the first method of determining the "ration" referenced in Section 2(C) of the Agreement.

76. The portion of the loan attributable to the upgrades to the Trunk Line was $1,413,543.

77. Section 8(D) of the Inter-City Agreement contains a mandatory yearly neutral audit to be conducted on Driggs books, stating "[o]n 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."

78. At the insistence of Victor, in 2024, Driggs conducted a neutral audit on its books for the first time.

79. Driggs did not comply with the audit, refusing and/or failing to provide necessary documents to conduct the audit at the request of the auditor.

80. The auditor also found that "[t]he City of Victor has been overpaying on the debt related to the DEQ Loan for improvements made to the Wastewater Treatment Facility and trunk line upgrades."

81. IDEQ forgave $232,948.35 in loans for the construction of the upgrades to the Trunk Line.

82. After forgiveness, the starting principal amount on the loan attributable to the Trunk Line is $1,180,594.65.

83. Victor's wastewater flow contributes to 44.1% of the total influent into Driggs' WWTP.

84. Applying Victor's pro-rata share of 44.1% to the Trunk Line costs, the principal balance that Victor should have been making debt service payments on was $623,372.46 *before* loan forgiveness.

85. *After* loan forgiveness, the principal balance attributable to Trunk Line costs that Victor should be making debt service payments on is $520,642.24.

86. With respect to the O&M expenses for the WWTP, the auditor stated "[w]e reviewed a sampling of the quarterly billings related to the operational expenses of the wastewater treatment facility, in [the auditor] review of three quarterly billings (Q3 2022-Q1 2023) [the auditors] were not able to reconcile all the billed amounts back to the submitted support for two of the three quarters. It is recommended that the quarterly billings be reconciled, and discrepancies be researched and resolved between the two cities on a quarterly basis."

87. Driggs did not provide the independent auditor with the records necessary to complete a sufficient audit of the O&M expenses.

88. Victor, in performing its payment obligations under the Inter-City Agreement, reasonably relied on Driggs' representations on its share of both the debt service and the operational costs.

89. Driggs has been overbilling Victor for debt service repayments and O&M costs.

90. Such overpayments made by Victor were caused by misrepresentations made by Driggs in Driggs quarterly invoices issued to Victor.

91. Driggs invoiced Victor and Victor paid Driggs over $300,000 for debt service reimbursements between 2014 and 2016. Driggs did not use those payments from Victor to pay the debt service but instead kept the money.

92. Section 8(c) of the Inter-city Agreement provides, "All operation and maintenance costs shall be identified and delineated by Driggs…"

93. Driggs did not and does not comply with the appropriate accounting standards for allocating expenses to the proper O&M Account.

94. Driggs does not keep a ledger tracking Victor's debt service repayments.

95. Driggs allocated non-O&M expenses to the WWTP account; inflating the O&M cost.

96. Victor, in reliance on Driggs' misrepresentations made in the quarterly invoices overpaid Driggs for both the debt service repayment and the O&M costs.

Separation

97. Driggs never formally notified 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."

98. Had Driggs notified Victor in 2018 of its EPA violations and the WWTP's design deficiencies, Victor could have terminated the Inter-City Agreement in 2018 and constructed its own plant at a fraction of the cost required to build today, instead of continuously overpaying Driggs for the debt service on the WWTP.

99. In a letter dated March 14, 2024, Driggs transmitted the 2022 US DOJ Complaint against Driggs to Victor, and notified Victor that it was "in negotiations with the EPA and Department of Justice during the last two years regarding NPDES permit violations."

100. Driggs further notified Victor that it would build "comprehensive waste-water treatment facility upgrades to bring the plant into compliance with our permit."

101. Driggs estimated that the "total cost for design and construction of the new activated sludge treatment plant will be $25,502,000".

102. The approximate cost to design and build WWTP sufficient to treat Victor's and Driggs' wastewater is actually $36,000,000 and would require an additional approximately $20,000,000 in upgrades to the Cities' collection systems.

103. The estimated cost for Driggs to comply with the consent decree if Driggs only treats its residents' wastewater is approximately $16,000,000.

104. Citing the Inter-City Agreement, Driggs gave Victor three options in the March 14, 2024 letter: (1) share in the costs of the WWTP upgrades; (2) have Driggs pass through Victor's proportionate share of costs of the WWTP upgrade to its users; or (3) terminate the Inter-City Agreement and build its own plant.

105. Notably, Driggs, in its March 14, 2024 letter did not acknowledge that it was obligated to provide a WWTP capable of treating Victor's and Driggs' wastewater, or that failure to meet such obligation is a breach of its duties under the Inter-City Agreement.

106. After receipt of the March 14, 2024 letter, Victor looked into the feasibility of building its own WWTP, as participating in the costs of Driggs' WWTP upgrade would unfairly saddle Victor's residents with Driggs' cost for not performing its duties under the Inter-City Agreement.

107. In an attempt to wrongfully offset the cost of the remaining debt service for the existing WWTP, the Trunk Line, and costs to upgrade the WWTP onto Victor, Driggs waited until April 2024 to formally notify Victor that it would be required to upgrade its WWTP.

108. Victor informally requested a fair customer services agreement from Driggs approximately three years ago.

109. Driggs informally told Victor that a fair customer services agreement would be forthcoming.

110. On July 1, 2024, Victor transmitted a letter to Driggs notifying Driggs and qualifying such notification that it "decided not to proceed with the construction of a separate wastewater treatment plant."

111. Victor further communicated and qualified its decision to Driggs in the July 1, 2024 letter that it believed it to be "in the best interest of both of our communities to renegotiate our current agreement" and that it was "eager to discuss terms that will be mutually beneficial, ensuring fair compensation for Driggs while maintaining affordable services for Victor's residents." (emphasis added).

112. Driggs agreed to draft a proposed new contract to replace the current Inter-City Agreement.

113. After multiple requests from Victor to Driggs for the proposed new contract referenced in Victor's July 1, 2024 letter, Driggs transmitted a new proposed contract for wastewater treatment services (the "Proposed Agreement") to Victor on February 12, 2025—over 7 months after Victor first formally requested a proposed agreement.

114. The Proposed Agreement did not provide a cost to Victor or its residents for Driggs to treat Victor's wastewater.

115. It was impossible to determine the cost to Victor because the Proposed Agreement excluded material terms.

116. The Proposed Agreement did not quantify the surcharge rates for biological loading.

117. In the Proposed Agreement, the treatment capacity fee and treatment base rate that Victor would pay under the Proposed Agreement was 1.0 times the rate that Driggs would pay.

118. In the Proposed Agreement, Driggs did not differentiate between flow and base rate.

119. The proposed treatment flow rate that Victor would pay under the Proposed Agreement was 1.5 times the rate that Driggs would pay.

120. Driggs would have passed the cost of its EPA violations, the resulting fines, and required costs to upgrade Driggs' WWTP disproportionately to Victor through user rates under the Proposed Agreement.

121. Under the Proposed Agreement, Victor would be required to pay a disproportionate amount of Driggs' violations and for upgrades to a plant that were necessitated because Driggs failed to perform its contractual duty to both provide a plant capable of treating Victor's wastewater and to sufficiently treat the wastewater.

122. The Proposed Agreement was not timely, was not "in the best interest" of Victor, and was not "mutually beneficial, ensuring fair compensation for Driggs while maintaining affordable services for Victor's residents."

123. After Driggs provided Victor with a Proposed Agreement, Victor and Driggs negotiated the Proposed Agreement.

124. Victor has been paying more than its pro-rata share of the debt service for the existing WWTP and Trunk Line.

125. Driggs' over invoicing Victor for the debt service, over invoicing for the O&M costs, its denial of a forgivable $20,000,000 of a $25,000,000 IDEQ loan, and its lack of timely notice to Victor that it would incur substantial costs to design and construct a WWTP complaint with IDEQ requirements, and combined with the exponential increase in construction costs since 2012, has resulted in Driggs taking away any feasible way for Victor to mitigate its damages.

126. After the negotiations between the Cities for a new WWTP agreement terminated, Victor identified property sufficient to construct a WWTP serving Victor's residents.

127. Victor then notified Driggs that it would be terminating the Inter-City Agreement in the future when Victor's WWTP was online and operational.

128. Section 3(B) of the Inter-City Agreement states in part, "[i]n the event the parties agree to terminate this agreement, Victor would be given ample time to create a solution for their wastewater needs before the agreement came to an end".

129. Since Victor notified Driggs of its decision to terminate the Inter-City Agreement in the future, Driggs' has demanded that Victor be disconnected from Driggs' WWTP by January 10, 2029.

130. Driggs' mayor threatened Victor that if it was not disconnected from Driggs' plant by January 10, 2029, that Driggs' bill to Victor would be "extremely expensive."

131. Under the Inter-City Agreement, Victor is entitled to "ample time" to acquire the land necessary for its WWTP, design its WWTP, construct its WWTP, and commission its WWTP.

132. A completion date of January 10, 2029 for Victor's WWTP to be commissioned and online is not ample time for Victor to "create a solution for its wastewater needs."

133. In an attempt to mitigate its damages, Victor again offered Driggs various arrangements where the Cities could share a common single WWTP.

134. Driggs refused any kind of joint partnership agreement, fair customer agreement, or any shared use arrangement with Victor.

COUNT ONE: BREACH OF CONTRACT – FAILING TO PROVIDE A WWTP SUFFICIENT TO TREAT THE WATER TO LEGAL STANDARDS AND TO TREAT THE WASTEWATER TO LEGAL STANDARDS

135. All prior paragraphs are incorporated by reference.

136. Victor and Driggs entered into a valid and enforceable contract, the Inter-City Agreement, for Driggs to provide wastewater treatment services to Victor.

137. Victor has performed its obligations arising under the contract and is not in material breach.

138. Under the Inter-City Agreement, Victor promised to reimburse Driggs for its proportionate share of Driggs' debt service and Driggs' O&M costs based on wastewater flow.

139. Victor has paid every invoice from Driggs in full and has performed all of its obligations owed to Driggs under the Inter-City Agreement.

140. Driggs is in material breach of the contract by failing to provide a WWTP sufficient to treat the water to legal standards and to treat the wastewater to legal standards.

141. Under the Inter-City Agreement, Driggs promised to provide and operate a WWTP "of sufficient size and capable of receiving and treating the anticipated wastewater from Victor."

142. Under Section 7 of the Inter-City Agreement, Driggs promised to be "solely responsible for conveying said wastewater to the Driggs Wastewater Facilities and for the treatment and disposal of said wastewater…." (emphasis added).

143. Implied in these obligations is Driggs' duty to provide a WWTP capable of treating the wastewater to Legal Standards and to actually treat the wastewater to Legal Standards.

144. The purpose of the Inter-City Agreement was for Driggs to properly treat Victor's wastewater to Legal Standards.

145. Driggs breached and continues to breach the Inter-City Agreement by failing to provide a WWTP capable of treating its and Victor's wastewater to Legal Standards.

146. Driggs breached and continues to breach the Inter-City Agreement by failing to upgrade the WWTP so as to make it capable of treating the wastewater to Legal Standards.

147. Driggs also breached and continues to breach the Inter-City Agreement by failing to treat the wastewater to legal standards.

148. Each contract entered into within the state of Idaho contains the implied covenant of good faith and fair dealing.

149. The breaches of contract by Driggs violate the covenant of good faith and fair dealing, and is a material breach.

150. The breaches of contract by Driggs constitute a material breach because it destroyed the purpose of the Inter-City Agreement.

151. As a result of such breach, Victor is expected to incur approximately $35,000,000 in costs to build its own WWTP including costs associated with acquiring property for a WWTP, design services, construction costs, and O&M costs.

152. Victor has incurred and will continue to incur damages in an amount to be proven at trial associated with Driggs' failure to provide a WWTP capable of treating the wastewater to Legal Standards.

153. Victor has been required to retain attorneys in order to protect its rights. Victor is entitled to attorney fees and costs pursuant to contract, Idaho Code §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable statute, rule or contract clause between the parties.

COUNT TWO: BREACH OF CONTRACT – FAILURE TO COMPLY WITH THE AUDIT REQUIREMENTS

154. All prior paragraphs are incorporated by reference.

155. Section 8(D) of the Inter-City Agreement states, "[o]n 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 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 Driggs' independent audit firm and the cost shall be born equally by Victor and Driggs."

156. Victor has performed its obligations arising under the contract and is not in material breach.

157. Driggs is in material breach of the contract by failing to comply with applicable audit requirements.

158. The only year Driggs had its independent auditor perform an audit was 2024.

159. Driggs breached the Agreement by failing to cause its independent auditor to audit its books on a yearly basis.

160. Driggs further breached the agreement by failing to comply with the 2024 independent audit.

161. Each contract entered into within the state of Idaho contains the implied covenant of good faith and fair dealing.

162. The breaches of contract by Driggs violate the covenant of good faith and fair dealing, and is a material breach.

163. Victor has incurred damages as a result of such breach in an amount to be determined at trial.

164. Victor has been required to retain attorneys in order to protect its rights. Victor is entitled to attorney fees and costs pursuant to contract, Idaho Code §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable statute, rule or contract clause between the parties.

COUNT THREE: BREACH OF CONTRACT – OVERBILLING VICTOR

165. All prior paragraphs are incorporated by reference.

166. Driggs has an obligation under the Inter-City Agreement to accurately bill Victor for the debt service repayments as well as for Victor's proportionate share of the O&M costs.

167. Victor has performed its obligations arising under the contract and is not in material breach.

168. Driggs is in material breach of the contract by overbilling Victor.

169. Driggs overbilled Victor for both the trunk line debt service reimbursements as well as the WWTP debt service reimbursements.

170. Driggs also overbilled Victor for its share of the O&M costs.

171. Victor has paid each invoice submitted by Driggs in full.

172. Each contract entered into within the state of Idaho contains the implied covenant of good faith and fair dealing.

173. The breaches of contract by Driggs violate the covenant of good faith and fair dealing, and is a material breach.

174. Victor has been damaged by Driggs' overbillings in an amount to be determined at trial.

175. Victor has been required to retain attorneys in order to protect its rights. Victor is entitled to attorney fees and costs pursuant to contract, Idaho Code §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable statute, rule or contract clause between the parties.

COUNT FOUR: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

176. All prior paragraphs are incorporated by reference.

177. Implied in every contract is a covenant that the parties will act in good faith and deal fairly with each other.

178. Driggs failed to deal fairly with and act in good faith toward Victor breaching the implied covenant of good faith and fair dealing as alleged herein including but not limited to the factual allegations and breaches alleged above.

179. Idaho law implies a covenant of good faith and fair dealing with regard to the dealings between Victor and Driggs that requires both parties to cooperate with each other and to perform the obligations imposed by the Inter-City Agreement.

180. Victor fully performed its obligations under the Inter-City Agreement by paying each invoice in full.

181. Driggs breached its duty of good faith and fair dealing by failing to provide a WWTP capable of treating Victor's wastewater to Legal Standards and not upgrading such WWTP so it was capable of treating Victor's wastewater to Legal Standards.

182. Driggs breached its duty of good faith and fair dealing when it refused to apply for a $20,000,000 forgivable loan to upgrade its WWTP to be capable of threating Victor's wastewater to legal standards and by not consulting or otherwise notifying Victor of such loan.

183. Driggs further breached the duty of good faith and fair dealing by knowingly employing people incapable of performing duties required by the NPDES Permit and failing to supplement, properly train, or replace such employees with other employees capable of performing duties required by the NPDES Permit.

184. Driggs also breached the duty of good faith and fair dealings by not performing adequate maintenance to the WWTP causing the maintenance and replacement costs to increase unnecessarily, and demanding payment for such increases from Victor.

185. Driggs breached the duty of good faith and fair dealings by not notifying Victor of its continuous violations of the NPDES Permit.

186. Driggs breached the duty of good faith and fair dealings by failing to notify Victor that its WWTP was incapable of treating Victor's wastewater to Legal Standards.

187. Driggs breached its duty of good faith and fair dealing by not consulting or otherwise including Victor in settlement negotiations with the DOJ regarding the 2024 lawsuit.

188. Driggs breached its duty of good faith and fair dealings when it imposed a date for Victor to be offline from its WWTP that is not "ample" time (as stated in the Inter-City Agreement) for Victor to purchase land, design, and construct a WWTP as necessary for Victor to be offline from Driggs' WWTP. Driggs further breached the duty of good faith and fair

dealings when it threatened Victor with "extremely expensive" fees if it failed to be offline from Driggs' WWTP by the unreasonable date imposed by Driggs.

189. Driggs also breached the duty of good faith and fair dealings by failing to formally notify Victor of its inability to comply its various consent decrees with the US DOJ.

190. Driggs breached its duty of good faith and fair dealing by refusing and or failing to cause an independent auditor to audit its records on an annual basis.

191. Driggs also breached the duty of good faith and fair dealings by refusing and failing to cooperate during the independent audit of its books that occurred in 2024.

192. Driggs also breached its duty of good faith and fair dealings by failing to comply with GAAP standards and failing to keep accurate accounting records associated with the WWTP loans, debt service, O&M costs, and the resulting invoices to Victor.

193. Driggs breached its duty of good faith and fair dealing by overbilling Victor for the debt service and O&M costs associated with the WWTP, despite knowing that the invoices it was sending to Victor were for more than Victor's proportionate share of those costs, and knowing that Victor was relying on Driggs' representations as to the amounts it owed under the Inter-City Agreement.

194. Driggs also breached its duty of good faith and fair dealings by failing to reimburse Victor for amounts it knowingly over billed Victor and for which Victor paid to Driggs.

195. Driggs' breaches of duty of good faith and fair dealing constitute lack of good faith, are dishonest, and illustrate Driggs' lack of diligence in performing its duties under the Inter-City Agreement.

196. Driggs' breaches of good faith and fair dealings have deprived Victor of its intended benefits of the Inter-City Agreement.

197. Due to Driggs' past actions involving dishonesty, lack of transparency, lack of notice, failure to make timely necessary upgrades to the WWTP, inability to properly operate and maintain the WWTP, and inability to properly bill Victor of the wastewater services, Victor has not choice but to terminate the InterCity Agreement in the future and own and operate its own WWTP.

198. Due to Driggs' dishonesty, lack of transparency, lack of notice, and failure to make timely necessary upgrades to the WWTP, construction costs have inflated increasing Victor's damages.

199. Victor has been and continues to be damaged as a direct result of Driggs' breach of the duty of good faith and fair dealing in an amount to be determined at trial.

200. Victor has been required to retain attorneys in order to protect its rights. Victor is entitled to attorney fees and costs pursuant to contract, Idaho Code §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable statute, rule, or contract clause between the parties.

COUNT FIVE: UNJUST ENRICHMENT

201. All prior paragraphs are incorporated by reference.

202. Victor conferred a benefit on Driggs by reimbursing Driggs for its share of the debt service payments incurred to design and build the WWTP and the trunk line, and its share of the O&M costs.

203. Driggs not only misrepresented these costs to Victor, but also retained all of the payments Victor made to Driggs.

204. Driggs' newly upgraded WWTP will cost substantially less because Driggs will retain the existing WWTP.

205. It would be inequitable and unjust for Driggs to retain the benefit conferred by Victor without paying Victor the value thereof.

206. Victor expected to benefit from the Inter-City Agreement for 30 years when it promised to pay Driggs its proportionate share of debt service for the WWTP and the trunkline.

207. Under the circumstances, it would be unjust for Driggs to retain the money Victor paid to Driggs under the Inter-City Agreement.

208. Victor has been required to retain attorneys in order to protect its rights. Victor is entitled to attorney fees and costs pursuant to contract, Idaho Code §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable statute, rule or contract clause between the parties.

COUNT SIX: BREACH OF CONTRACT - BREACH OF THE MEDIATION AGREEMENT

209. All prior paragraphs are incorporated by reference.

210. Victor and Driggs agreed to mediate this dispute.

211. Victor and Driggs mediated this dispute on January 21, 2026.

212. Victor and Driggs both assented to the Agreement to Mediate.

213. The Agreement to Mediate is a contract between the Parties.

214. A true and accurate copy of the Agreement to Mediate is attached as Exhibit C.

215. Paragraph 6 of the Agreement to Mediate states "[t]he Rules of Mediation attached hereto are expressly adopted and incorporated by reference".

216. A true and accurate copy of the Rules of Mediation are attached as Exhibit D.

217. Paragraph 7 of the Mediation Agreement states; "All parties and participants are asked to sign this Mediation Agreement. ANY PERSON WHO HAS NOT SIGNED THIS MEDIATION AGREEMENT, BUT PARTICIPATES IN THE MEDIATION (IN PERSON OR REMOTELY VIA ZOOM, TELEPHONE OR SIMILAR MEANS) AGREES TO BE BOUND BY THE TERMS OF THIS MEDIATION AGREEMENT NOTWITHSTANDING THE ABSENCE OF THEIR SIGNATURE."

218. Victor's Mayor attended mediation and is bound to the terms of the mediation agreement including confidentiality obligations owed to Victor.

219. Victor has performed its obligations and did not materially breach the Mediation Agreement.

220. Driggs is in material breach of the Mediation Agreement.

221. Driggs owes Victor a duty to keep mediation communications confidential.

222. Paragraph 5 of the Rules of Mediation states in part; "**Confidentiality.** All statements made during the entire mediation process (including pre and post mediation session communications) are deemed to be confidential, privileged, and inadmissible for any purpose in any proceeding. The mediation process begins as soon as the mediator is contacted by any of the participants and ends when the mediator considers the process complete…".

223. Driggs breached its obligation to keep communications made in mediation confidential on at least two occasions.

224. Driggs' Mayor was quoted in the Jackson Hole News & Guide January 28, 2026 issue stating "Driggs presented its final proposal during mediation, and we are still waiting on Victor's response."

225. On February 17, 2026, Driggs' Mayor notified a member of Victor's City Counsil that Driggs released mediation communication in response to a public records request.

226. On February 21, 2026, the Teton Valley Wire published an article titled "Inside the Mediation: A Look at the offers between Victor & Driggs" (the "Teton Article").

227. The Teton Article stated that "Documents obtained through a public-records request", the Teton Article described in detail Driggs' last offer, emails between Driggs legal counsel and Victor's legal counsel regarding Driggs' offer, as well as emails between Driggs' Mayor and a member of Victor's City Council discussing the offer and a potential counteroffer.

228. On February 25, 2026, the Jackson Hole News & Guide published an article titled "Mediation documents peel back wastewater divide between Driggs and Victor" and included a settlement letter sent by counsel for Driggs that purportedly memorialized the last settlement offer made at mediation. The article references information released by Driggs related to the mediation.

229. The confidential mediation communications released by Driggs are disparaging and damaging to Victor's reputation.

230. The confidential mediation communications released by Driggs includes false information used to justify Driggs' offer.

231. The real value of Driggs' offer is substantially lower than the value that Driggs falsely claims in its last offer.

232. Driggs released the confidential communications for the purpose of disparaging Victor.

233. Each contract entered into within the state of Idaho contains the implied covenant of good faith and fair dealing.

234. The breaches of contract by Driggs violate the covenant of good faith and fair dealing, and is a material breach.

235. Victor is entitled to mitigates damages to its reputation by taking corrective action by releasing other mediation communications so that the confidential communications released by Driggs can be taken in the proper context.

236. Victor will be able to mitigate some damage to its reputation, but not all the damage to its reputation caused by Driggs' release of confidential information that constitutes a breach of the Mediation Agreement.

237. Victor has incurred financial damages associated with Driggs' breach of the Mediation Agreement.

238. Victor has been forced to incur and continues to incur attorneys' fees as well as public relations firm fees to mitigate damage to its reputation as a result of Driggs' breach of the Mediation Agreement.

239. Victor is entitled to its damages associated with Driggs' breach of the Mediation Agreement including but not limited to compensatory damages associated with its direct costs incurred to mitigate damages to its reputation and consequential damages associated with its damage to its reputation.

240. Victor has been required to retain attorneys in order to protect its rights. Victor is entitled to attorney fees and costs pursuant to contract, Idaho Code §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable statute, rule or contract clause between the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the trier of fact enter judgment in favor of Plaintiff and against Defendant on its action for:

1. Entry of judgment for Plaintiff and against Defendant in an amount to be established at trial.

2. Compensatory damages for breach of contract in an amount to be proven at trial;

3. Disgorgement of all amounts Victor paid to Driggs;

4. Awarding Plaintiff pre-judgment and post-judgment interest;

5. Awarding Plaintiff its costs and attorney's fees pursuant to contract, I.C. §§ 12-117, 12-120, & 12-121, Rule 54 of the Idaho Rules of Civil Procedure and any other applicable statute, rule or contract clause between the parties; and

6. Awarding Plaintiff any other relief deemed just and equitable under the circumstances.

JURY DEMAND

Plaintiff demands trial by jury pursuant to Rule 38 of the Idaho Rules of Civil Procedure on all issues triable to a jury.

DATED: March 5, 2026.

/s/ Jeffrey D. Brunson
Jeffrey D. Brunson
Of Beard St. Clair Gaffney
Attorney for Plaintiff

Exhibit A

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

Exhibit B

DRIGGS/VICTOR

INTER-CITY AGREEMENT
FOR WASTEWATER TREATMENT SERVICES

This AGREEMENT, made and entered into the _____ day of _____, 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

ordinances similar to those of **Driggs** as they presently exist and as they may from time to time be amended or added upon, governing the discharge of water or materials of any kind into **Victors** collection system and to administer and enforce said rules or ordinances. Nothing herein shall, however, require **Victor** to require the removal by its residents of septic tanks, the use of which are discontinued when users connect to **Victors** wastewater collection system.

15) **Damages**. All costs, damages, and expenses, including but not limited to administration costs, attorney's fees, and the reasonable value of equipment and employee time incurred by either party to this agreement because of other party's or its residents' failure to abide by this Agreement or failure to comply with applicable rules and ordinances regulating discharge of materials into the wastewater collection system, shall be borne and paid by the party whose discharge creates or causes the damage.

16) **Surplus Revenues**. Both **Victor** and **Driggs** may utilize any surplus revenues from their wastewater budgets to meet any financial obligations they may have under this Agreement if their present budgets are inadequate to meet said needs. For the fiscal years following, each party will adopt appropriate wastewater budgets or utilize appropriate bonding methods to finance the costs of services rendered or improvements contemplated by this Agreement, however, either party may continue to use waste water reserves to meet such financial obligations.

17) **Liabilities**. Each party shall be responsible for their own collection system and trunk lines and each agrees to indemnify and hold the other harmless for loss, damage, demands, or claims of any kind arising from their own actions or neglect.

18) **Insurance**. Driggs agrees to maintain full replacement cost insurance and state required liability insurance for the facilities. Driggs also agrees to have Victor named as an additional insured on all such policies.

19) **Operator in Training and Access**. Victor shall be permitted to have one of its public works employees act in the role of an operator in training under the applicable Idaho DEQ regulations. In addition, Victor shall be permitted access to the facilities at all times.

20) SEVERABILITY. If any provision of this Contract is declared illegal, void or unenforceable, the remaining provisions herein will not be affected and will remain in full force and effect.

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 CITY OF VICTOR, IDAHO

by_____ by_____
Dan Powers, Mayor Scott Fitzgerald, Mayor

ATTEST: ATTEST:

_____ _____
City Clerk City 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

Exhibit C

AGREEMENT TO MEDIATE

We, the undersigned participants, agree to utilize the mediation services of Marvin M. Smith to facilitate a settlement of the dispute, and acknowledge and accept the following terms and conditions:

1. The parties consent to the appointment of Marvin M. Smith to act as mediator in this matter. The mediator shall act as an advocate for resolution and shall use his best good faith effort to assist the parties in reaching a mutually acceptable settlement. The mediator will maintain impartiality toward all parties.

2. Mediation is a voluntary process for settlement negotiation. In this context, mediators act as impartial third parties exclusively and do not represent any disputant or otherwise practice law. The mediator will not give legal advice. Likewise, the mediator is not a judge, nor does the mediator have the power or authority to force a settlement on the parties. Participants are encouraged to consult with their own attorney regarding their legal rights and responsibilities.

3. All statements made during the mediation process are deemed to be privileged and inadmissible for any purpose in any proceeding. The parties will not subpoena or otherwise require the mediator to testify or produce records, reports, notes or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.

4. Additionally, the mediator may hold a private meeting or "caucus" with one participant. Information revealed in a private meeting is confidential and will not be disclosed by the mediator unless the participant authorizes disclosure.

5. The attorneys and his/her client are jointly and severally responsible to Hawley Troxell Ennis & Hawley LLP for payment of fees and costs, including, but not limited to, additional hours provided before and/or after the mediation. The contract to retain Mr. Smith's services is entered into in Idaho Falls, Idaho.

6. The Rules of Mediation attached hereto are expressly adopted and incorporated by reference.

7. All parties and participants are asked to sign this Mediation Agreement. ANY PERSON WHO HAS NOT SIGNED THIS MEDIATION AGREEMENT, BUT PARTICIPATES IN THE MEDIATION (IN PERSON OR REMOTELY VIA ZOOM, TELEPHONE OR SIMILAR MEANS) AGREES TO BE BOUND BY THE TERMS OF THIS MEDIATION AGREEMENT NOTWITHSTANDING THE ABSENCE OF THEIR SIGNATURE.

_____	_____
Plaintiff	Defendant
Date:_____	Date:_____
_____	_____
Attorney	Attorney
Date:_____	Date:_____

Exhibit D

RULES OF MEDIATION

1. **Definition of Mediation**. Mediation is a process in which an impartial person, the mediator, facilitates communication between the participants to promote settlement, partial agreement, or understanding among them. The mediator does not have the authority to decide any issue, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The mediator may suggest ways of resolving the dispute and offer an opinion (not legal advice), but may not impose his/her own judgment on the issues for that of the parties. The mediator will not and cannot impose a settlement in the case. The participants are responsible for negotiating a settlement acceptable to them. The mediator does not warrant or represent that settlement will result from the mediation process, or that a settlement is in the best interests of any or all parties.

2. **Ground Rules and Commitment to Participate in Good Faith**. While no one is asked to commit to settle their case in advance of mediation, all participants commit to participate in the proceedings in good faith with the intention to settle. All participants also agree to abide by the following **GROUND RULES: (a) participate 100%; (b) comment constructively and specifically; (c) one speaker at a time; (d) mutual respect; (e) attack the problem, not the person; (f) explore all options fully and specifically; and (g) keep an open mind**.

3. **Authority of Representation**. PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE, AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT.

4. **Privacy**. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the participants and with the consent of the mediator.

5. **Confidentiality**. All statements made during the entire mediation process (including pre and post mediation session communications) are deemed to be confidential, privileged, and inadmissible for any purpose in any proceeding. The mediation process begins as soon as the mediator is contacted by any of the participants and ends when the mediator considers the process complete. Confidential information disclosed to a mediator by the parties or by anyone during the course of the mediation process shall not be divulged by the mediator unless the participants authorize disclosure or disclosure is authorized by law (e.g., child abuse reporting statute, future crimes involving physical harm, professional disciplinary rules). The mediator shall not be compelled to divulge any documents/records or to testify in regard to the mediation process in any proceeding or forum. The parties shall not subpoena or otherwise require the mediator to testify or produce documents received, reviewed, or prepared by the mediator during the course of the mediation process.

6. **No Stenographic Record**. There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session. The mediator and the participants shall be allowed to take personal notes during the mediation session.

7. **No Service of Process at or Near the Site of the Mediation Session**. No subpoenas, summons, complaint, citations, petitions, writs or other process may be served at or near the site of any mediation session upon any person entering, attending or leaving the session.

8. **Termination of Mediation**. The mediation shall be terminated: (a) by declaration of the mediator, or (b) by declaration of one party that he/she no longer wishes to participate for any reason, except when required by law or court order.

9. **Fees, Costs, and Jurisdiction**. Any participant breaching this agreement shall be liable for and indemnify the non-breaching participants for all costs, expenses, liabilities, and fees, including attorney's fees, whether or not legal action is instituted, which may be incurred as a result of such breach, including at trial and on appeal. The participants consent to the jurisdiction of the State of Idaho. Idaho law applies in all matters relevant to this agreement.

10. **Mediation and Arbitration, Between You and Mediator**. The participants agree that in the event a dispute arises with respect to the agreement between you and Marvin M. Smith, the participants shall submit the dispute to non-binding mediation before a professional attorney/mediator. If the dispute cannot be resolved through mediation, the participants agree to submit the dispute to binding arbitration. The mediation shall be held in accordance with these rules, and arbitration shall be held in accordance with the rules of the State of Idaho.

11. **Interpretation and Application of Rules**. The mediator shall have sole authority to interpret and apply the Agreement to Mediate and these rules.