

# NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on **Wednesday, January 29, 2020** in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

- A. PLEDGE OF ALLEGIANCE\*
- B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES\*
- C. PUBLIC COMMENTS\* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

**Public Comment Advisory Statement** – *A public body has a legitimate interest in conducting orderly meetings. IVGID may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

- D. APPROVAL OF AGENDA *(for possible action)*

*The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.*

**-OR-**

*The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.*

- E. REPORTS TO THE BOARD OF TRUSTEES\*
  - 1. Verbal Presentation by Laura Whitney, United States Army Corps of Engineers Representative via telephone
  - 2. Verbal Presentation by Marcus Faust, IVGID's Legislative Advocate to the U.S. Federal Government
  - 3. Verbal Presentation by Tahoe Transportation District – Co-Location Project, Bicycle Path – **pages 1 - 8**

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## **Incline Village General Improvement District**

*Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.*

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

[www.yourtahoeplace.com](http://www.yourtahoeplace.com)

# NOTICE OF MEETING

Agenda for the Board Meeting of January 29, 2020 - Page 2

## F. GENERAL BUSINESS (*for possible action*)

1. Review, discuss and provide direction on the Effluent Export Project – Phase II – Fund: Utility; Division: Sewer; Project 2524SS1010 (Requesting Staff Member: Director of Public Works Joe Pomroy and Engineering Manager Nathan Chorey) – **pages 9 - 287**
2. Reconsider action taken on January 22, 2020 relative to receiving, discussion and direction to Staff to file the June 30, 2019 Comprehensive Annual Financial Report including an Unmodified Report by the District's Auditor, as required by NRS 354.624, and in accordance with IVGID Board Policy 3.1.0., 0.9 Reconsideration. (Requesting Trustee: Chairman Tim Callicrate) ) – **pages 288 - 294**
3. Receive and direct Staff to file the June 30, 2019 Comprehensive Annual Financial Report including an Unmodified Report by the District's Auditor, as required by NRS 354.624 (Requesting Trustee: Chairman Tim Callicrate) ) – **pages 295 - 296**
4. Review, discuss and possible make a motion to approve a letter with attachments, a draft of which will be available at the meeting on January 29, 2020, addressed to the State of Nevada, Department of Taxation with the subject being receipt of the Incline Village General Improvement District Comprehensive Annual Financial Report; Trustee(s) Comments (Requesting Trustee: Chairman Tim Callicrate) ) – **page 297**
5. Review, discuss and possible make a motion to approve not to exceed thirty thousand dollars (\$30,000.00), from the General Fund, so that the Interim District General Manager can issue a contract to an unspecified legal firm to conduct a very limited scope of work (Requesting Trustee: Chairman Tim Callicrate) ) – **page 298**

G. PUBLIC COMMENTS\* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see **Public Comment Advisory Statement** above.

H. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (*for possible action*) ) – **page 299**

I. ADJOURNMENT (*for possible action*)

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### CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, January 24, 2020 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of January 29, 2020) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley's Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID's Recreation Center
7. The Chateau at Incline Village

/s/ Susan A. Herron, CMC

Susan A. Herron, CMC

District Clerk (e-mail: sah@ivgid.org/phone # 775-832-1207)

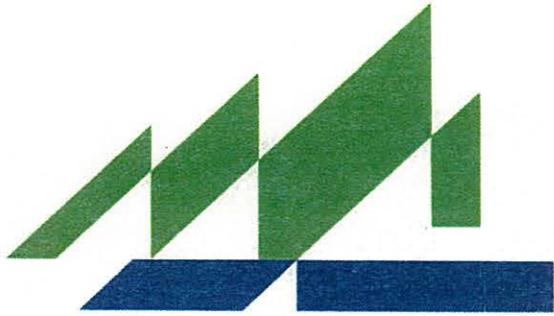
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**Board of Trustees:** Tim Callicrate - Chairman, Matthew Dent, Sara Schmitz, Kendra Wong, and Peter Morris.

**Notes:** Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (\*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.

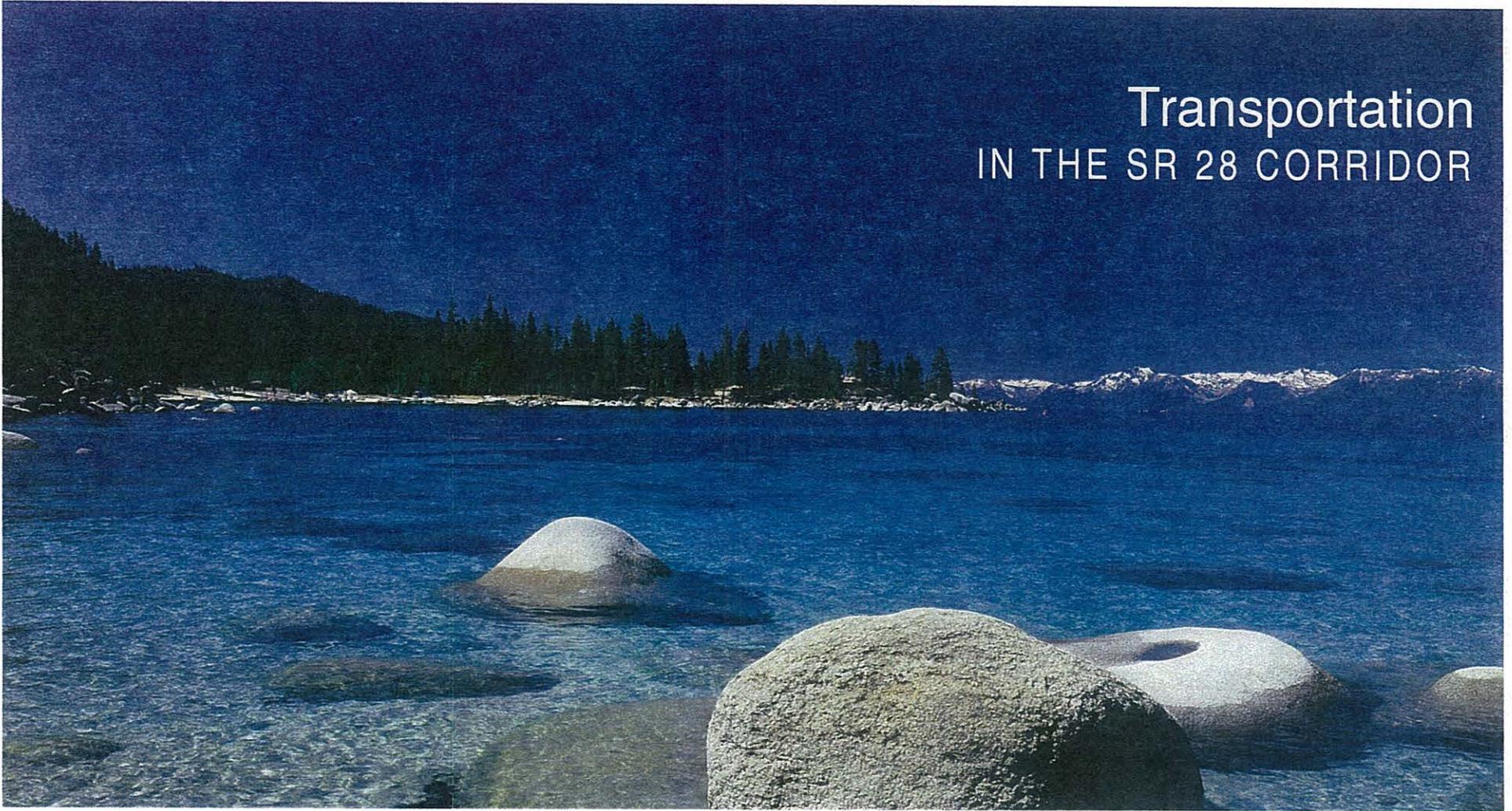
**IVGID'S agenda packets are now available at IVGID's web site, [www.yourtahoeplace.com](http://www.yourtahoeplace.com); go to "Board Meetings and Agendas". A hard copy of the complete agenda packet is also available at IVGID's Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.**

\*NRS 241.020(2) and (10): 2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting ...10. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.



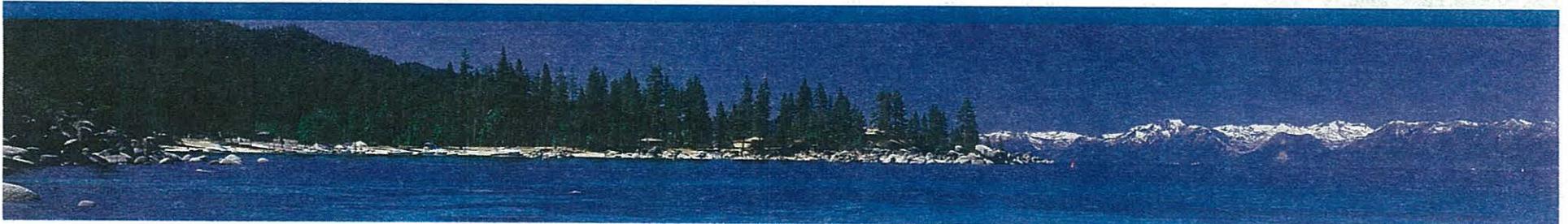
# Tahoe Transportation DISTRICT

## Transportation IN THE SR 28 CORRIDOR



# Partnership and Collaboration Success

- TTD and Project Partners have completed over \$100 million in transportation projects in the last ten years, including a trail that was said to be impossible
- Consolidating multiple large projects has
  - Made projects more comprehensive and competitive for grant funding and bid construction
  - Reduced project costs through cost sharing(ex. Traffic control) and in SR 28 by construction of large parking areas that can be used for construction staging.
  - Brought innovation and new construction techniques
  - Commitments to upgrade infrastructure including adding fiber conduit for community economic development, public safety, healthcare and education.
- Continued commitment by all partnering agencies to find solutions

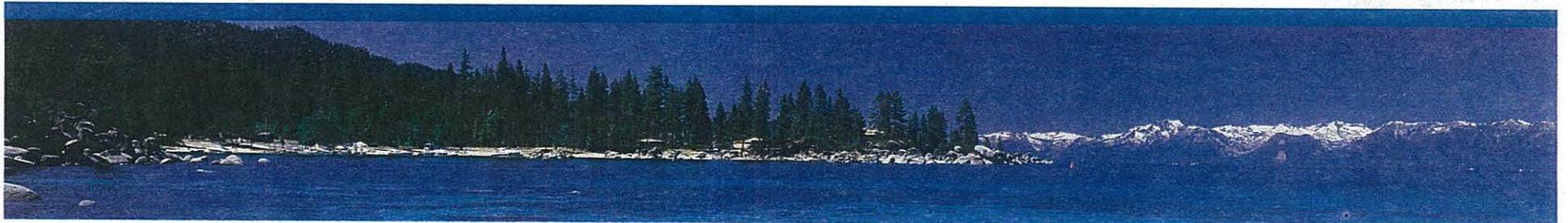


# SR 28 Central Corridor Update

- USFS released the Record of Decision on January 17, 2020 completing the environmental analysis for IVGID's pipeline, the trail and the parking lots/construction staging areas. Next is final design and permitting
- NDOT and TTD's Funding Agreement for 60% Engineering Design (includes co-location of IVGID's pipeline, NV Energy's power line) will go to the respective Boards, including IVGID's, February or March 2020
- Request for Proposal submittals and consultant approval is anticipated to be completed by summer 2020
- Grant submittals for construction concurrent with project startup



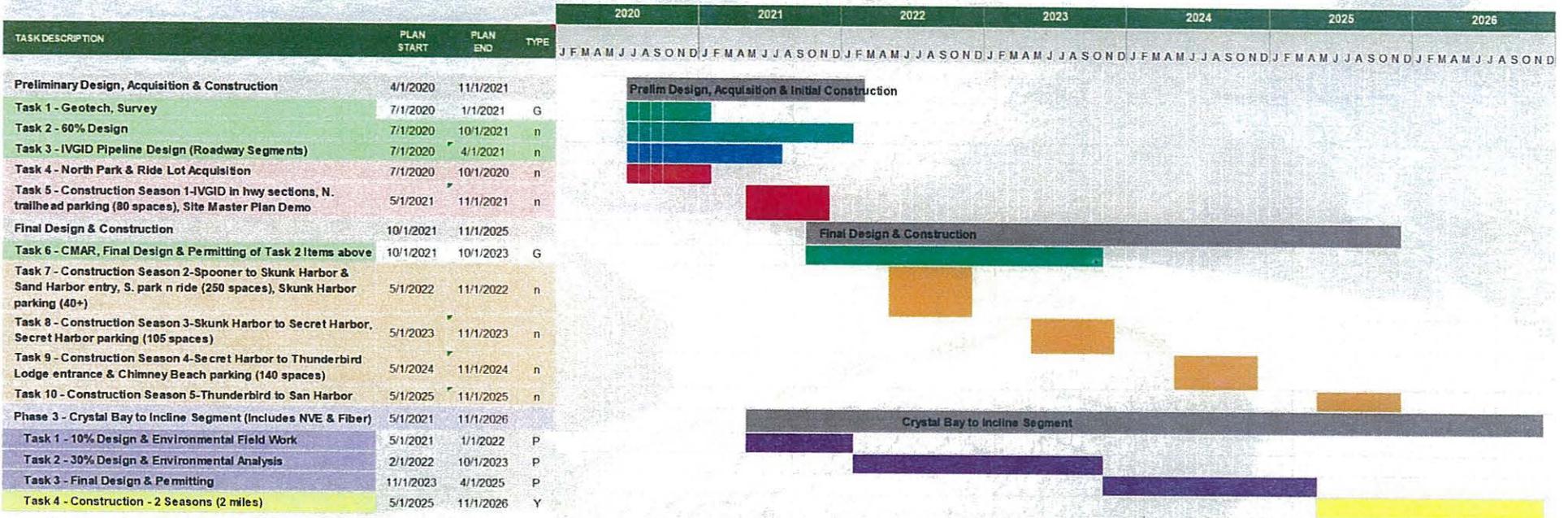
Tahoe Transportation  
DISTRICT



# SR 28 Corridor Schedule

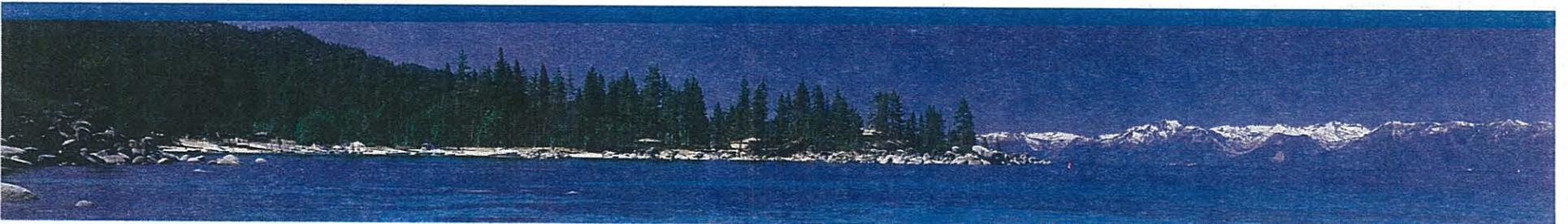
## PROJECT SCHEDULE

SR 28 Corridor Safety Improvements & Shared Use Path Phase 2



- Green Design Phase - Design Team
- Blue Design Phase - Agency
- Purple Future Environmental & Design Phase
- Red Initial Construction/Acquisition Phase
- Orange Construction Phase
- Yellow Future Construction Phase

Tahoe Transportation DISTRICT



# SR 28 Corridor Anticipated Funding Sources

Federal Lands Access Program (FLAP)

State Question 1 (SQ-1)

Transportation Alternatives Program (TAP)

Environmental Improvement Program (EIP)

IVGID & NV Energy Utility Co-location Match

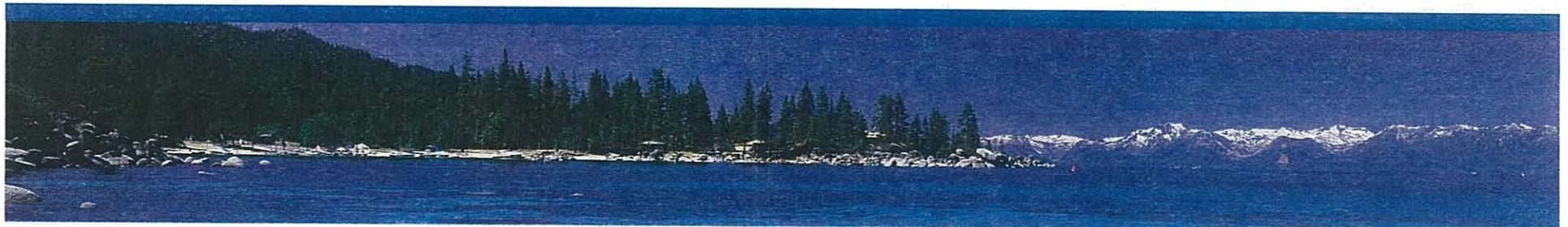
FTA 5311

STBG

USDA (fiber-optic)



Tahoe Transportation  
DISTRICT



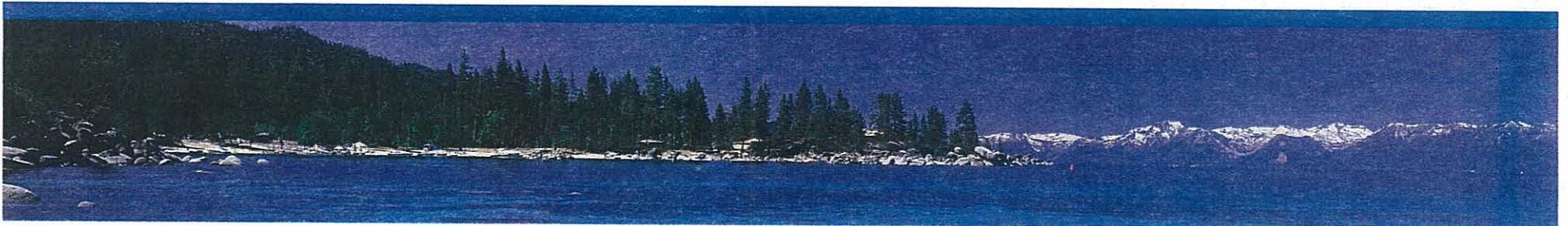
# SR 28 Corridor Opportunities to Leverage through Co-location in One Project

The installation of infrastructure is necessary for community economic development, safety, the environment and to meet today's transportation needs, technology requirements and to provide for emergency response.

- IVGID's export line is 50 years old
- NV Energy's power line is 90 years old
- Fiber connections to regional infrastructure are non-existent
- Sixty years since the transportation facilities have had any major upgrades
- Forty plus years since Recreation facilities have had any major infusion of dollars



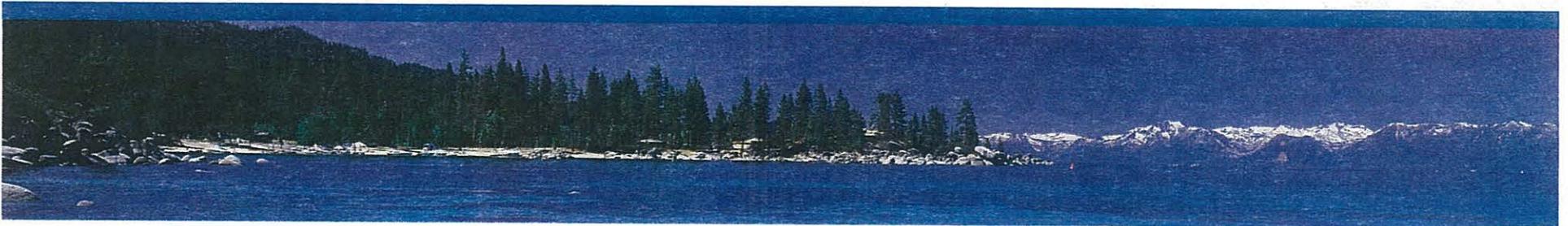
Tahoe Transportation  
DISTRICT





# The timing is now, for all partners

- Instituting solutions to SR 28 congestion is critical for corridor safety and emergency traffic flow
- Undergrounding of utilities with the trail project saves money and improves the environment
- Keep momentum going with a concurrent approach, ex. environmental work (Crystal Bay to Incline); final design on Central Corridor; continued grant work
- Bringing SR 28 transportation and recreation facilities up to a national park quality is what the residents and visitors deserve
- Multi-modal transportation improvements revitalize communities and encourages private sector investments





## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Indra Winqest  
Interim General Manager

**FROM:** Joseph J. Pomroy, P.E.  
Director of Public Works

**SUBJECT:** Review, discuss and provide direction on the Effluent Export Project – Phase II – Fund: Utility; Division: Sewer; Project 2524SS1010.

**STRATEGIC PLAN:** Long Range Principle #1 – Resources and Environment  
Long Range Principle #2 – Finance  
Long Range Principle #5 – Assets and Infrastructure

**DATE:** January 16, 2020

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### **I. RECOMMENDATION**

Review, discuss and provide direction on the Effluent Export Project – Phase II – Fund: Utility; Division: Sewer; Project 2524SS1010.

Direct Staff to:

- Reallocate Carry Forward from Phase II to the Effluent Export System
- Establish Effluent Export System Pond Lining Project
- Establish Effluent Export System Pipeline Project - Replace 5,067 linear feet of Segment 3 in SR-28
- Provide regular Effluent Export System Project Update in the General Manager Report

### **II. DISTRICT STRATEGIC PLAN**

Long Range Principle #1 – Resources and Environment - Initiating and maintaining effective practices of environmental sustainability for a healthy environment, a strong community and a lasting legacy.

- Objectives for 2018-2020 - Continue Legislative Advocacy efforts at the Federal Government level to support appropriations for water and wastewater infrastructure improvements that support Principle 1 and Principle 5.

Long Range Principle #2 – Finance - The District will ensure fiscal responsibility and sustainability of service capacities by maintaining effective financial policies for operating budgets, fund balances, capital improvement and debt management.

- Objective 2018-20 - Utilize annual and interim financial reports to build understanding of the different aspects between operations, capital improvement and debt service.

Long Range Principle #5 – Assets and Infrastructure - The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation activities.

- Objectives for 2018-2020 - Complete condition analysis and project scoping for the Effluent Export Project – Phase II and continue to pursue project partnerships and federal funding to reduce District costs.

# Effluent Export System Project Summary January 29, 2020

Joseph J. Pomroy, P.E. – Director of Public Works



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1. What is the Effluent Export System
2. Completed Projects 2006-2012
3. Components and Reason for the Effluent Export System Priority Project
4. Results of Condition Assessment and Repairs
5. Expenditures for Condition Assessment and Repairs
6. Fall 2019 Segment 3 Pipeline Leaks
7. Priority Project Total Expenditures 2012-2019
8. Utility Fund Flow of Resources

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9. Board Direction of Strategy for Effluent Export Priority Projects
10. Effluent Export Priority Project with Bike Path Co-Location
11. Effluent Export Priority Project without Bike Path Co-Location
12. Effluent Export Priority Project Budget and Flow of Resources
13. Effluent Pond Lining Project
14. Effluent Export Priority Project Accelerated Schedule
15. Recommendation

# District Strategic Plan

- Long Range Principle #1 – Resources and Environment - Initiating and maintaining effective practices of environmental sustainability for a healthy environment, a strong community and a lasting legacy.
- Objectives for 2018-2020
  - Continue Legislative Advocacy efforts at the Federal Government level to support appropriations for water and wastewater infrastructure improvements that support Principle 1 and Principle 5.



# District Strategic Plan

- Long Range Principle #2 – Finance - The District will ensure fiscal responsibility and sustainability of service capacities by maintaining effective financial policies for operating budgets, fund balances, capital improvement and debt management.
- Objective 2018-20
  - Utilize annual and interim financial reports to build understanding of the different aspects between operations, capital improvement and debt service

# District Strategic Plan

- Long Range Principle #5 – Assets and Infrastructure - The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation activities
- Objectives for 2018-2020
  - Complete condition analysis and project scoping for the Effluent Export Project – Phase II and continue to pursue project partnerships and federal funding to reduce District costs.

# Effluent Export System

## Section 1

What is the Effluent Export System?

# Effluent Export System

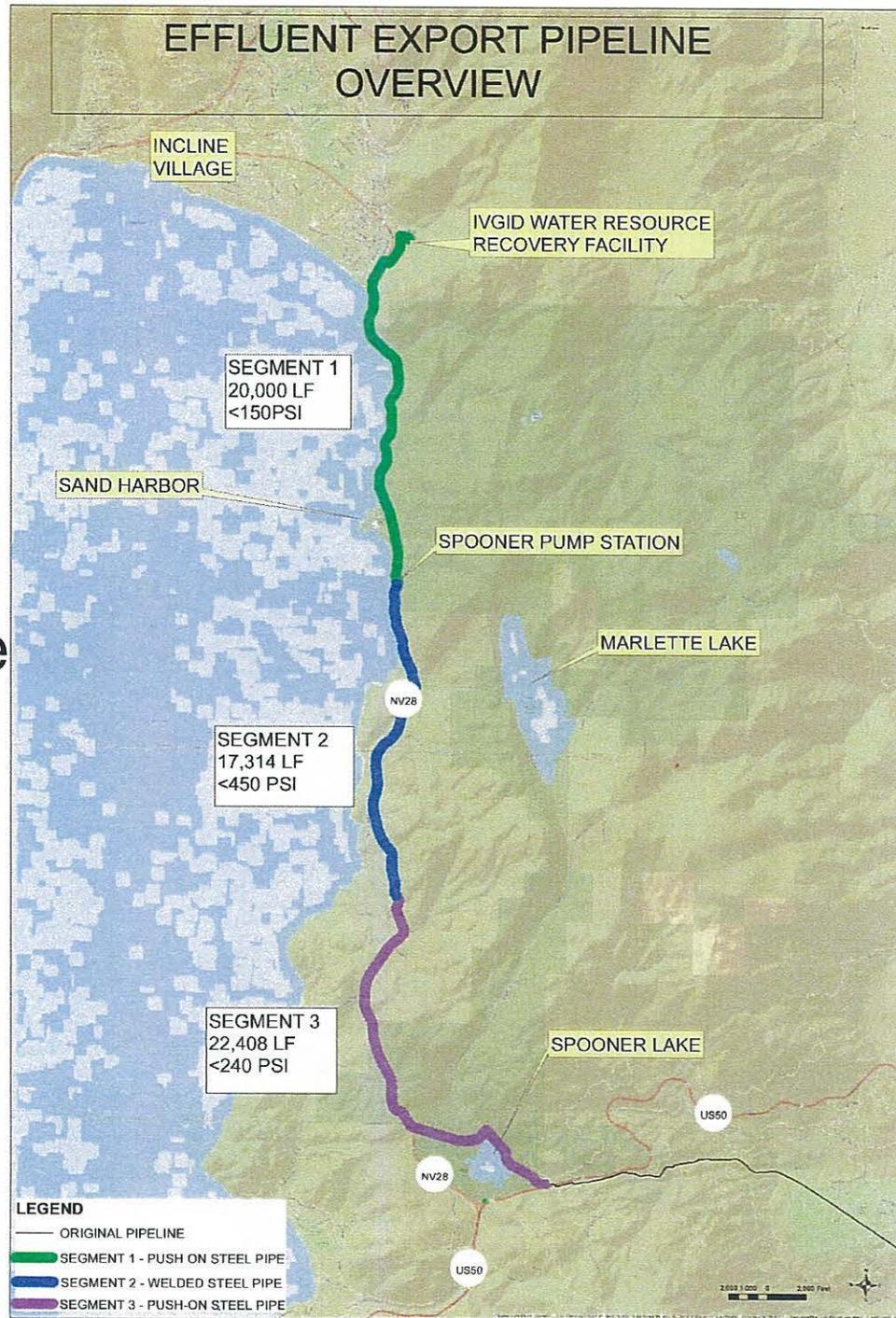
- Part of a regionally mandated effort to eliminate all wastewater effluent discharges in the Lake Tahoe Basin
- Completed Construction in 1970
  - Approximately 21-miles of pipeline
  - Spooner Pumping Station
  - 500,000 gallon storage reservoir
  - 2.4 million gallon emergency storage pond (1961)
  - 13.5 million gallon emergency storage pond (1961)
- Wetlands Construction Completed in 1984

# IVGID: Protecting the Basin's Resources Today, for Tomorrow



- Segment 1 (Phase I)
  Segment 2
  Segment 3
  Segment 3 (Phase I)
- Segments 4 & 6 Existing Pipe to Remain in Service
  Segment 5 (Phase I)
  Phase II Effluent Export Pipeline

# Lake Tahoe Effluent Pipeline Segments



Effluent Export System  
Section 2  
Completed Projects  
2006-2012

# Effluent Export Project – Phase I

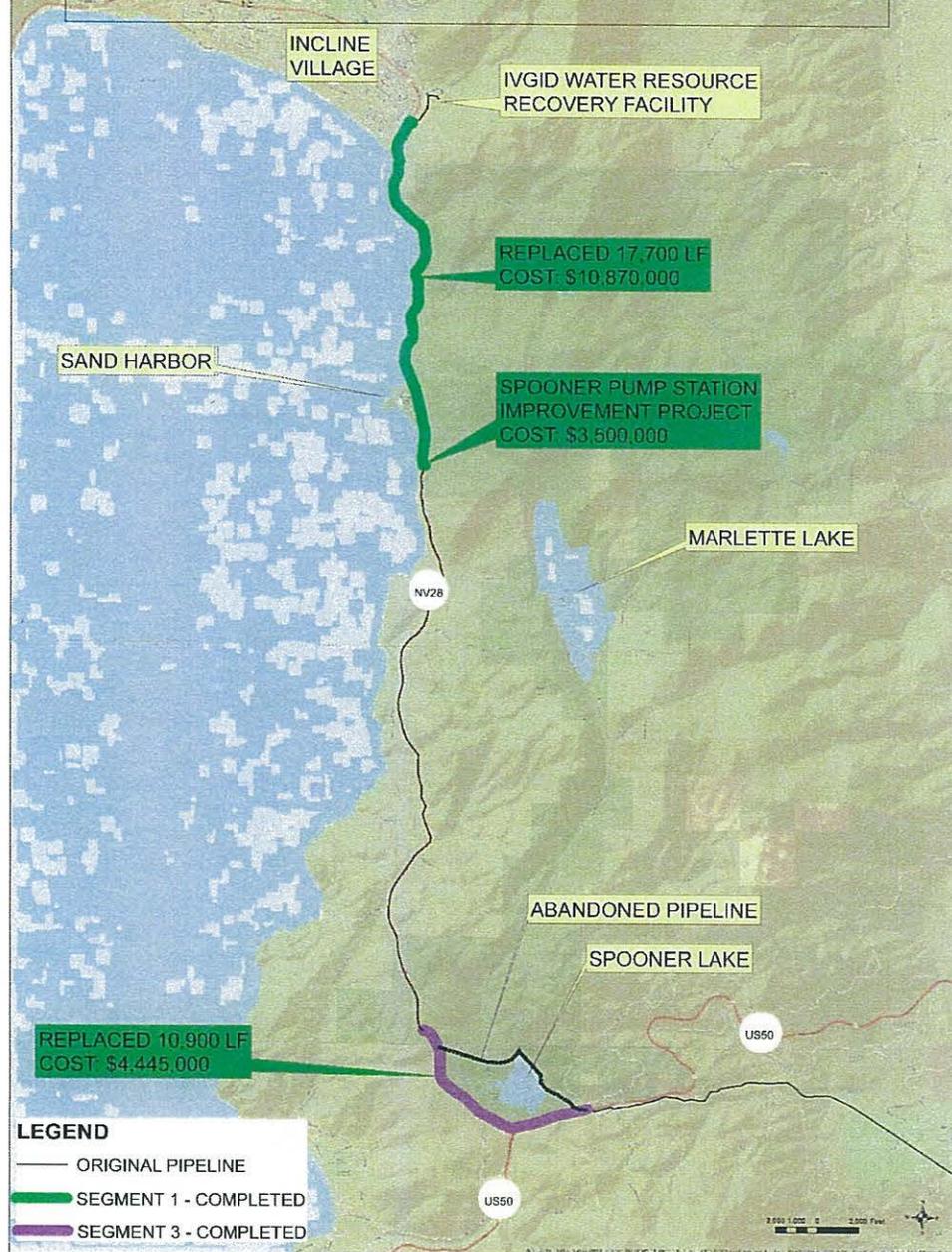
- Pipeline replacement – 2006 to 2009
  - Segment 1 – 17,700-lf (~3.4-miles) from Incline to Sand Harbor
  - Segment 3 – 10,900-lf (~2.1-miles) around Spooner Meadow
  - Segment 5 – 1,200-lf (~0.2-miles) near Carson River
  - Sand Harbor and Memorial Point Projects
- Spooner Pumping Station – 2012
  - Expanded emergency power capacity
  - Improved pump redundancy and reliability
- Work completed in partnership with
  - USACE (Section 595 program)
  - State of Nevada



# Effluent Export System – Completed Projects

Project	Year	Total Project Cost	USACE Share	IVGID Share	Nevada Share
Effluent Export Pipeline Project Segment 1	2006	\$9,270,000	\$6,952,500	\$2,147,500	\$170,000
State Parks System Improvements (Sand Harbor & Memorial Point)	2007	\$1,300,000	\$975,000	\$137,000	\$188,000
Effluent Export Pipeline Project Segment 3 – South	2007	\$3,250,000	\$2,437,500	\$812,500	–
Effluent Export Pipeline Project Segment 3 – North	2008	\$1,200,000	\$900,000	\$300,000	–
Effluent Export Pipeline Project Segments 1 & 5	2009	\$1,600,000	\$1,200,000	\$400,000	–
Spoooner Pumping Station Improvements Project	2012	\$3,500,000	\$2,625,000	\$875,000	–
Effluent Export Pipeline Phase II - Engineering	2013	\$475,000	\$356,250	\$118,750	–
	<b>Total</b>	<b>\$20,595,000</b>	<b>\$15,446,250</b>	<b>\$4,790,750</b>	<b>\$358,000</b>

# EFFLUENT EXPORT PIPELINE COMPLETED PIPELINE REPLACEMENT 2006-2009



# Segment 1 Construction - 2006



# Segment 1 Construction - 2006



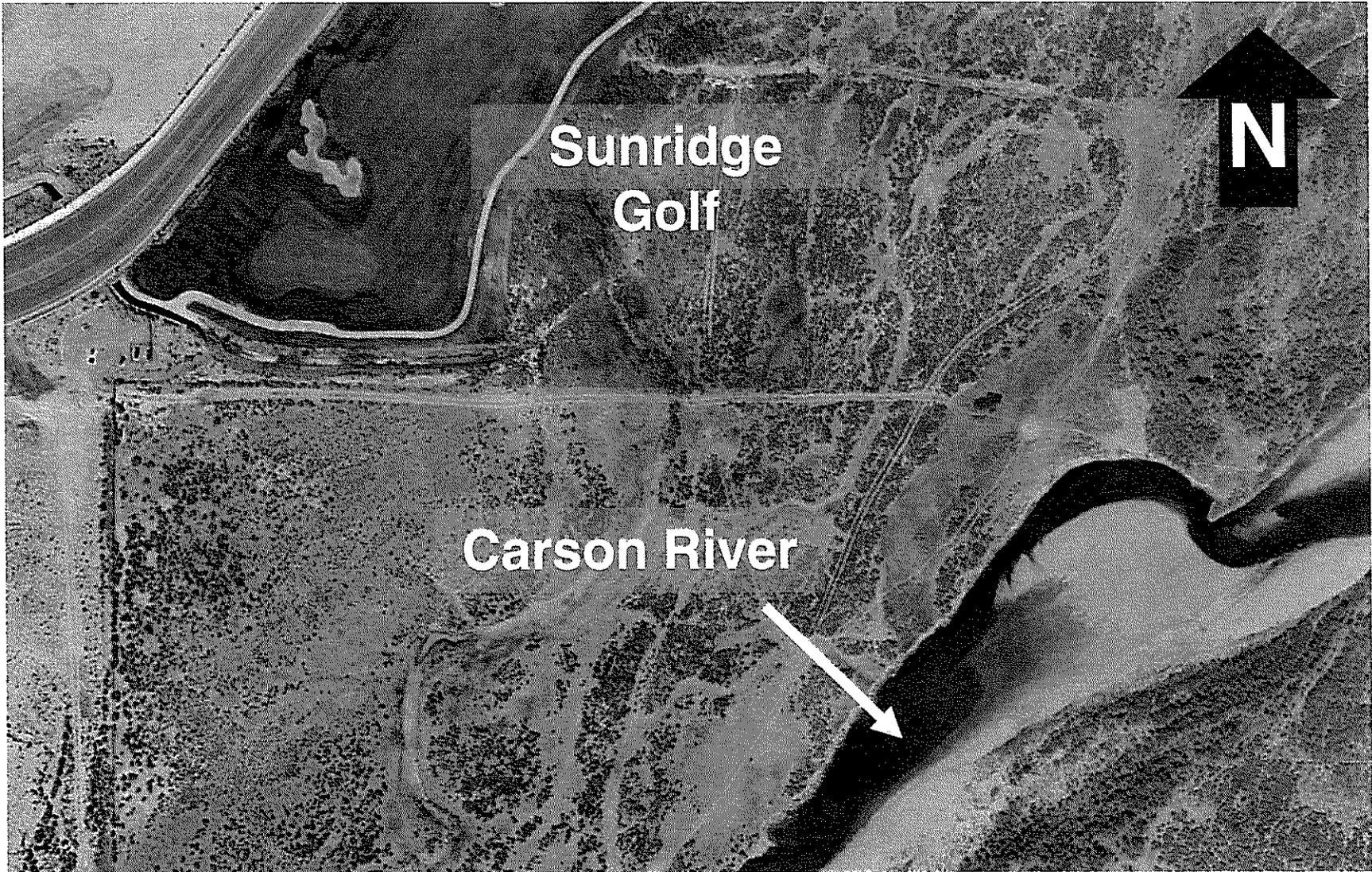
# Segment 3 Construction 2007-08



# Segment 3 Construction 2007-08



# Export Pipeline – Segment 5 2009



# Segment 5 Construction - 2009





# Effluent Export System

## Section 3

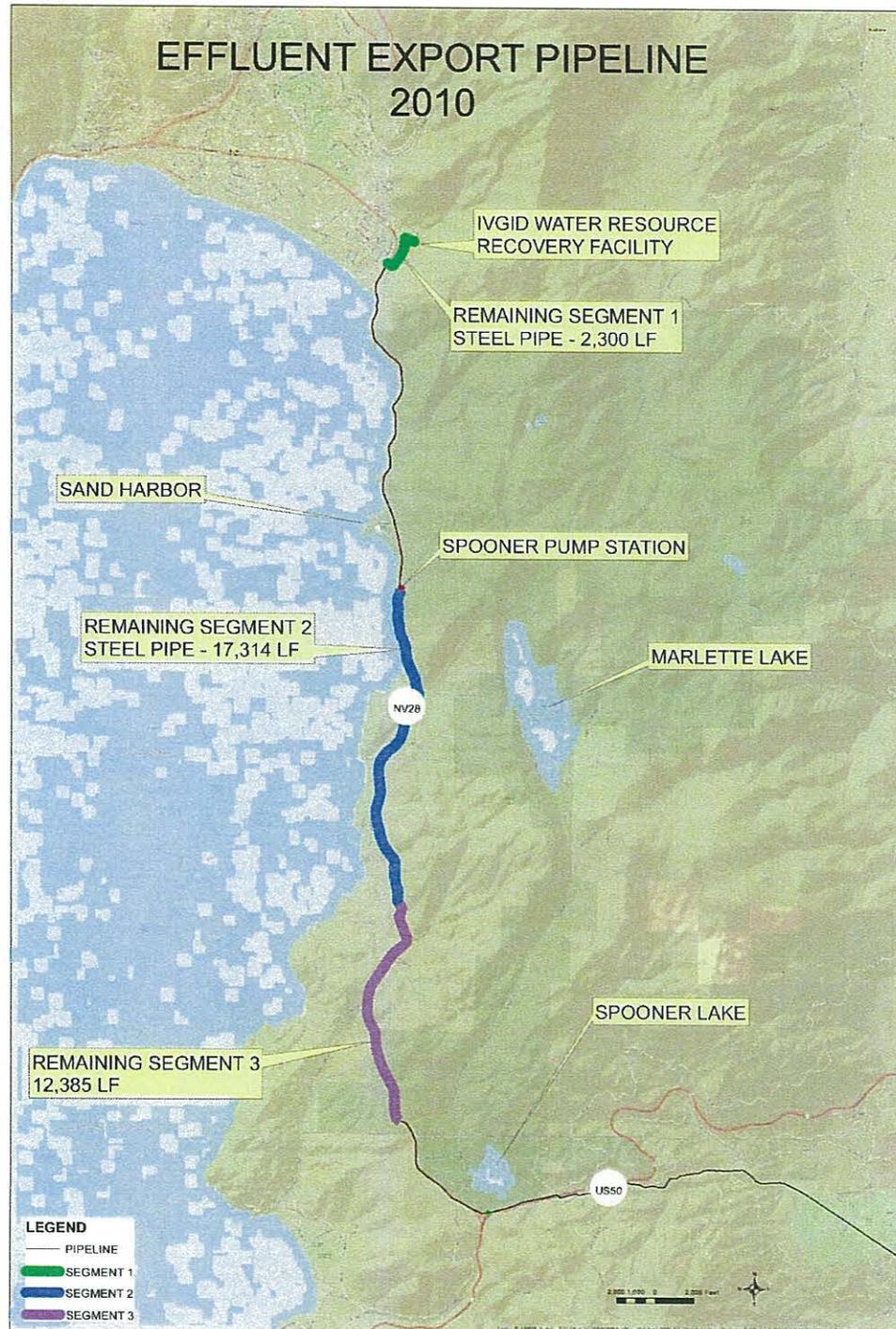
What are the Components and Reason for the Effluent Export System Priority Projects?

# Effluent Export System – Priority Projects

## Attribute Information

- **Segment 2 – Installed 1970**
  - 17,314-lf (~3.3-miles) of welded steel pipe
  - Cement mortar lined with 3 wall thicknesses
  - No leaks to date on this segment
- **Segment 3 – Installed 1970**
  - 12,385-lf (~2.3-miles) of push-on steel pipe remains
  - Cement mortar lined
  - Numerous small leaks and two catastrophic failures
- **Effluent Pond – Installed 1961**

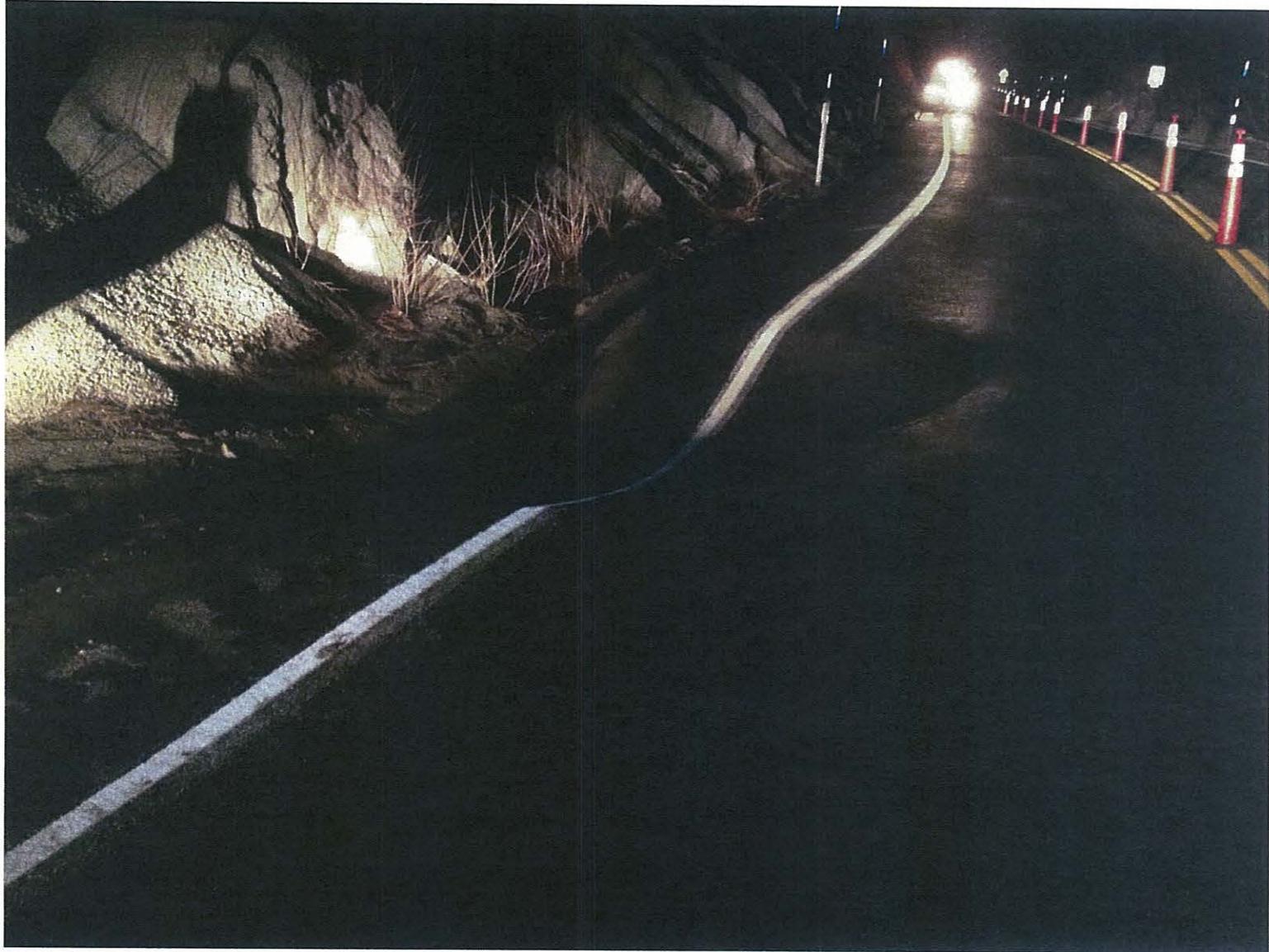
# Remaining Lake Tahoe Effluent Pipeline Segments after Completed Projects



# Segment 3 – Major Leak 2009



# Segment 3 – Major Leak 2014



# Segment 3 – Major Leak 2014



# Segment 3 – Major Leak 2014



# Regulatory Action Taken in 2014 Issued By Nevada Div. Env. Protection

- Finding of Alleged Violation and Order issued on December 3, 2014 for release of 135,000 gallons of treated effluent into the Lake Tahoe Basin
- Required to provide a plan that shall be immediately implemented to evaluate and repair or replace the export pipeline to protect Lake Tahoe and the Tahoe Basin from future unanticipated discharges.
- Violation Order Resolved on May 9, 2019



# NDEP – Administrative Order



STATE OF NEVADA  
Department of Conservation & Natural Resources  
Steve Sisolak, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

May 9, 2019

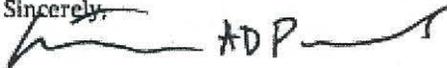
Joseph J. Pomroy P.E.  
Director of Public Works  
Incline Village General Improvement District  
1220 Sweetwater Rd  
Incline Village, NV

**Re: CLOSE OUT LETTER – Notice of Violation # AOC120314W1**  
PERMIT NUMBER: NS0030009 - Case Closure

Dear Mr. Pomroy,

The Nevada Division of Environmental Protection (Division) has reviewed all submitted information for this Administrative Order on Consent (AOC) **AOC120414W1** for the Assessment of the Effluent Export Pipeline and agrees the conditions of the AOC, issued on December 03, 2014, have been fully satisfied. Therefore, **AOC120414W1** between Incline Village General Improvement District and the Division is hereby closed.

If you have any further questions, please contact me through phone (775) 687-9435, or through email at [kpascual@ndep.nv.gov](mailto:kpascual@ndep.nv.gov) with questions or comments regarding this matter.

Sincerely,  
ADP

Katrina A. Pascual, PE,  
Supervisor, Technical, Compliance, and Enforcement Branch  
Bureau of Water Pollution Control

# Segment 3 – 2016 Small Surfacing Leak



# Segment 3 – 2016 Small Surfacing Leak



# Segment 3 – 2016 Small Surfacing Leak



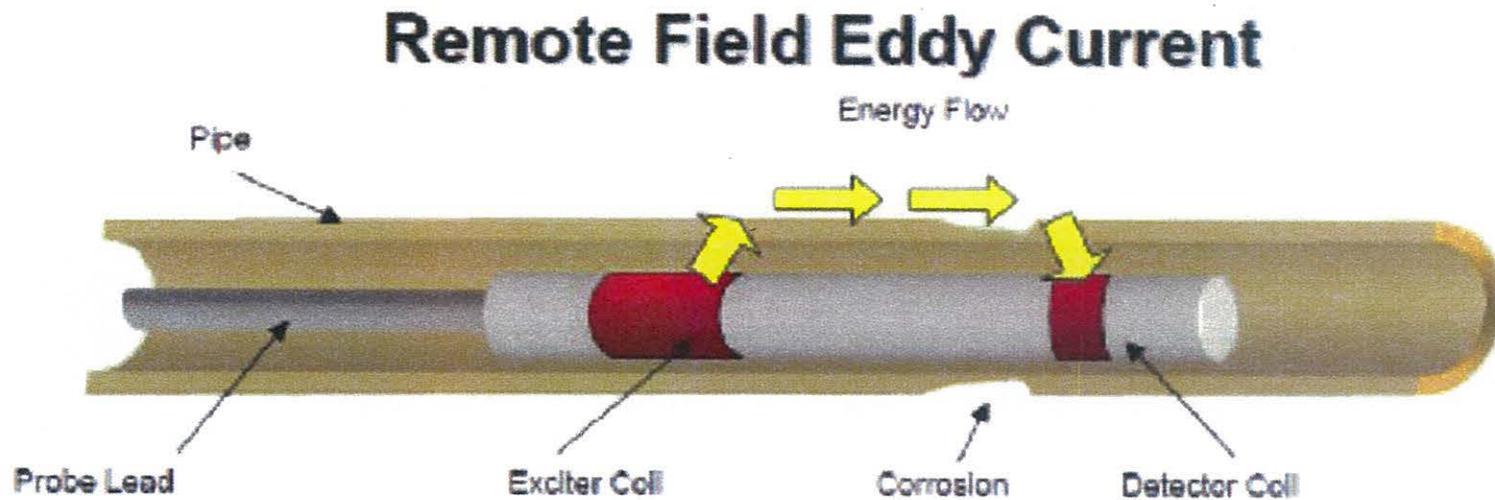
# Effluent Export System

## Section 4

What are the Results of Condition  
Assessment and Contracted  
Repairs for Effluent Export System  
Priority Projects

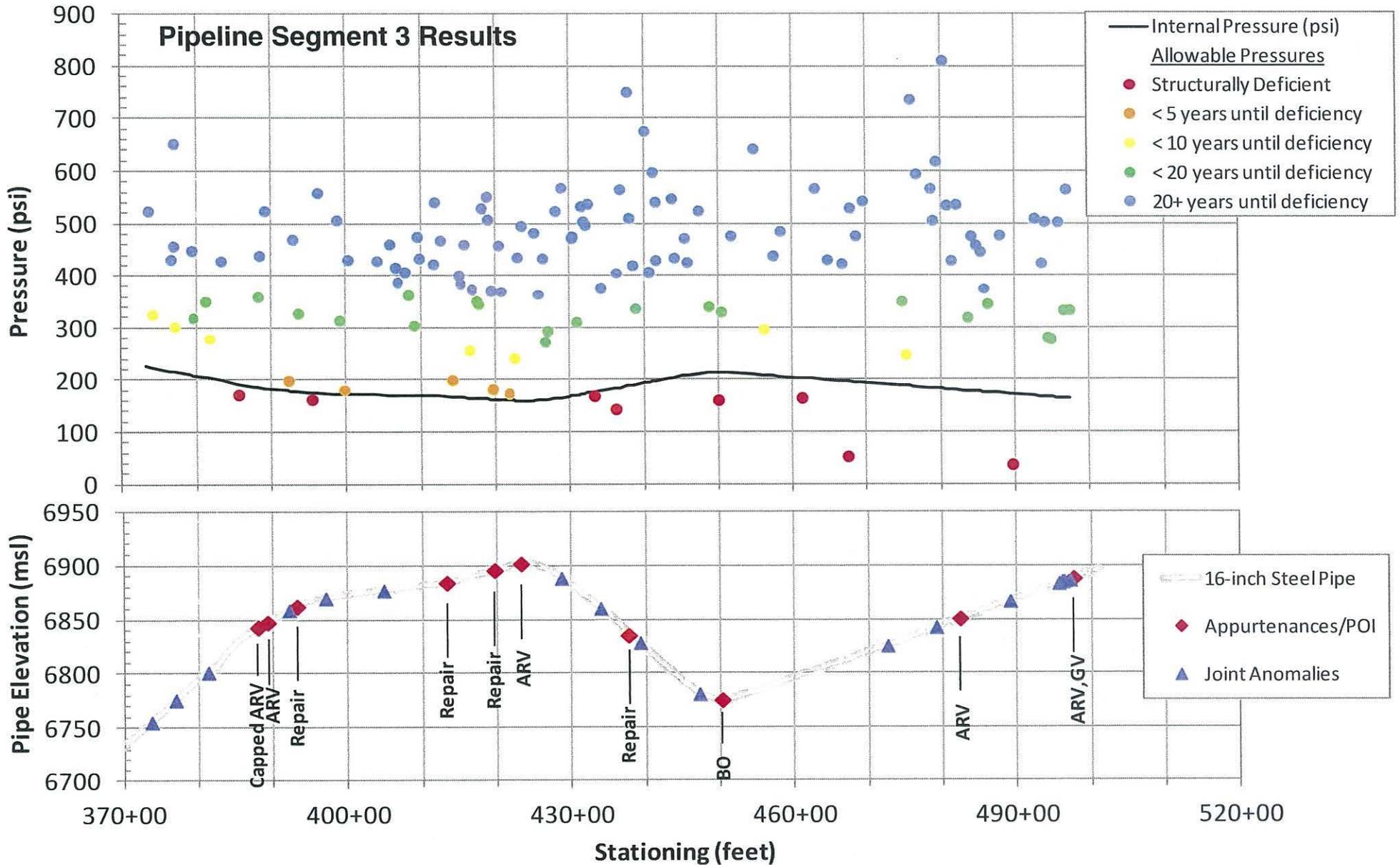
# 2014 - Condition Assessment Technology Selected through RFP Process

- Electromagnetic Remote Field Testing



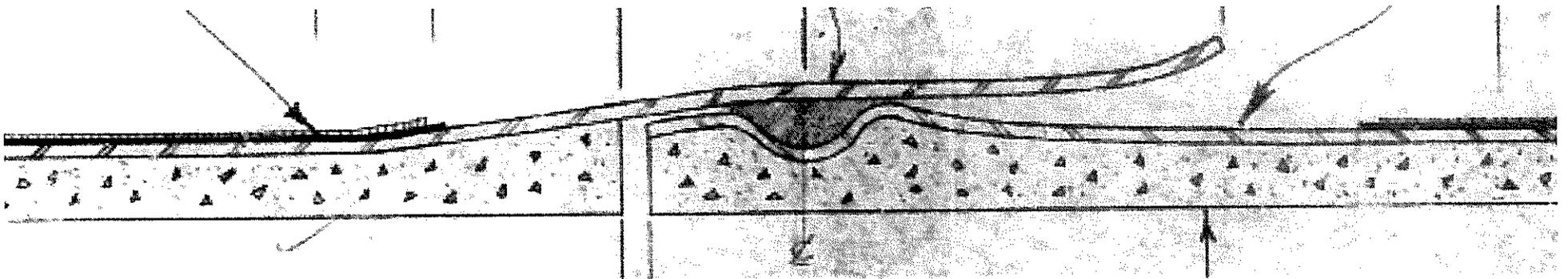
**Figure 1. Basic Setup of RFT probe in pipe.**

# 2015 Condition Assessment Results



# 2015 Condition Assessment Results

- No data for Segment 2
  - Additional data collection following repairs required
- Complete data set for Segment 3
  - 13 total defects identified for immediate repair
  - Segment 3 requires eventual replacement





# 2017 Interlocal Agreement w/NDOT

- Interlocal Agreement
  - Repair completed under NDOT's SR-28 Pathway Project by Granite Construction (NDOT's Contractor)
  - Replaced 13 pipeline sections in Segment 3
    - 80 to 100-lf replacement sections (1,080-lf total)
    - Construction cost of \$1,151,000
    - Require roadway paving and guardrail installation

# NDEP – Administrative Order



STATE OF NEVADA  
Department of Conservation & Natural Resources  
Steve Sisolak, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

May 9, 2019

Joseph J. Pomroy P.E.  
Director of Public Works  
Incline Village General Improvement District  
1220 Sweetwater Rd  
Incline Village, NV

**Re: CLOSE OUT LETTER – Notice of Violation # AOC120314W1**  
PERMIT NUMBER: NS0030009 - Case Closure

Dear Mr. Pomroy,

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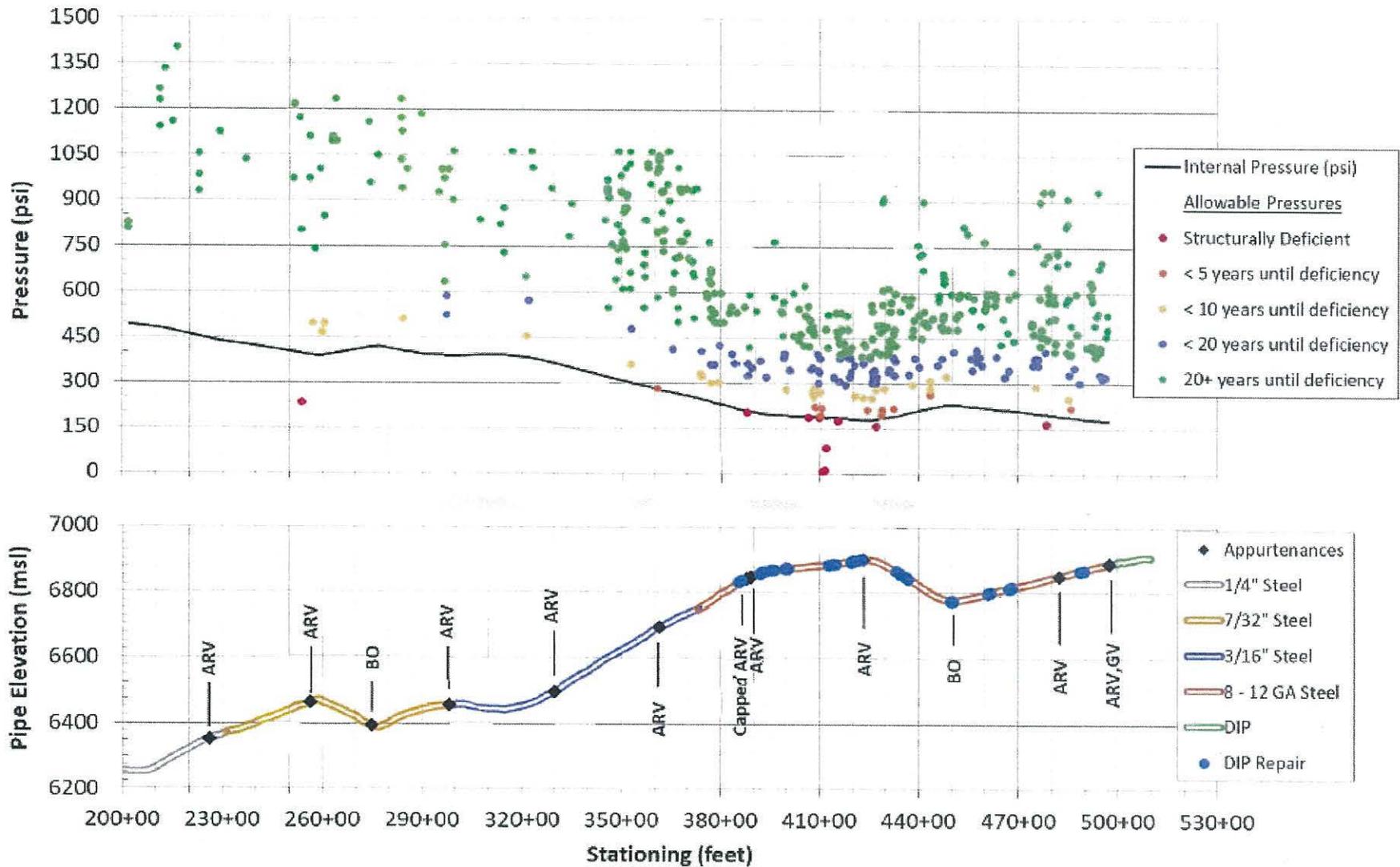
If you have any further questions, please contact me through phone (775) 687-9435, or through email at [kpascual@ndep.nv.gov](mailto:kpascual@ndep.nv.gov) with questions or comments regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Pascual" followed by a flourish.

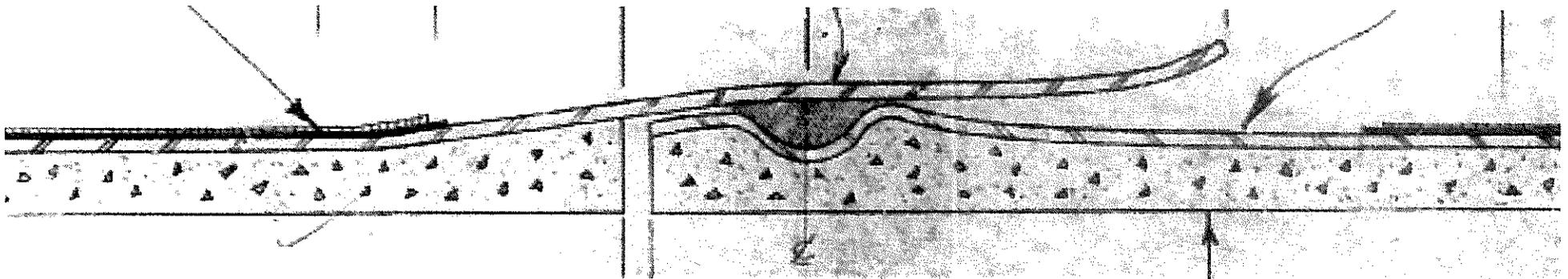
Katrina A. Pascual, PE,  
Supervisor, Technical, Compliance, and Enforcement Branch  
Bureau of Water Pollution Control

# 2018 Condition Assessment Results



# 2018 Condition Assessment Results

- Complete data set for Segment 2
  - 2 total defects identified for near term repair (0 to 5 years)
- Complete data set for Segment 3
  - 14 total defects identified for near term repair (0 to 5 years)
  - Three leaks in 2019 that necessitated repair



# Effluent Export System

## Section 5

What are the Expenditures for  
Condition Assessment and  
Contracted Repairs for Effluent  
Export System Priority Projects

# Effluent Export System Priority Project

## Predesign – Condition Assessment

<b>HDR Engineering Services</b>	<b>Expenditure</b>
2011 – Preliminary Engineering Report on 31,000 lf of export pipeline	\$367,000
2012 – Preliminary Engineering for Assessment and Selection of Condition Assessment Technology on 31,000 lf of export pipeline	\$96,000
2014 – Design of Launch and Extraction Facilities	\$90,000
2015 – Design of Pipeline Repair after Failed PICA Launch in 2014	\$63,000
2016 – Design of 13 Repair Sites of deficient export pipeline segment 3 based on 2015 PICA condition assessment data and review of data	\$85,000
2019 – Assessment of 2018 PICA Condition Assessment Data (\$20,000 remaining)	\$22,000
<b>HDR Engineering Services 2012-2019 Total</b>	<b>\$723,000</b>

# Effluent Export System Priority Project Predesign – Condition Assessment

<b>PICA Condition Assessment Services</b>	<b>Expenditure</b>
2014 – PICA Condition Assessment Services	\$515,000
2018 – PICA Condition Assessment Services	\$484,800
<b>PICA – Condition Assessment Total</b>	<b>\$999,800</b>

# Effluent Export System Priority Project Predesign – Condition Assessment

<b>Vendor/Item/Description</b>	<b>Expenditure</b>
2014 Export Pipeline Parts and Valves for Extraction and Launch Facilities	\$102,000
2014 Construction Contracts for Extraction and Launch Facilities	\$43,000
2014 Pump Rentals and Transport for Condition Assessment Operation	\$39,000
2015 Export Pipeline Parts and Valves for Extraction and Launch Facilities	\$24,000
2015 Construction Contracts for Extraction and Launch Facilities	\$39,000
2015 Pump Rentals and Transport Condition Assessment Operation	\$49,000
2018 Pump Rentals Condition Assessment Operation	\$15,000
2018 Export Pipeline Parts for Extraction and Launch Facilities	\$13,000
2018 Other Services, surveying, misc supplies	\$10,000
<b>Equipment, construction and rentals associated with PICA Condition Assessment</b>	<b>\$334,000</b>



# Effluent Export System Priority Project Predesign – Condition Assessment

<b>Vendor/Item/Description</b>	<b>Expenditure</b>
HDR Engineering Services	\$723,000
PICA – Condition Assessment	\$999,800
Equipment, construction and rentals associated with PICA Condition Assessment	\$334,000
<b>Total</b>	<b>\$2,056,800</b>
<b>29,750 LF of Export Pipeline Predesign, Condition Assessment and construction of launch and extraction facilities</b>	<b>\$69 per LF</b>

Effluent Export System  
Section 6  
Fall 2019 Segment 3  
Pipeline Leaks

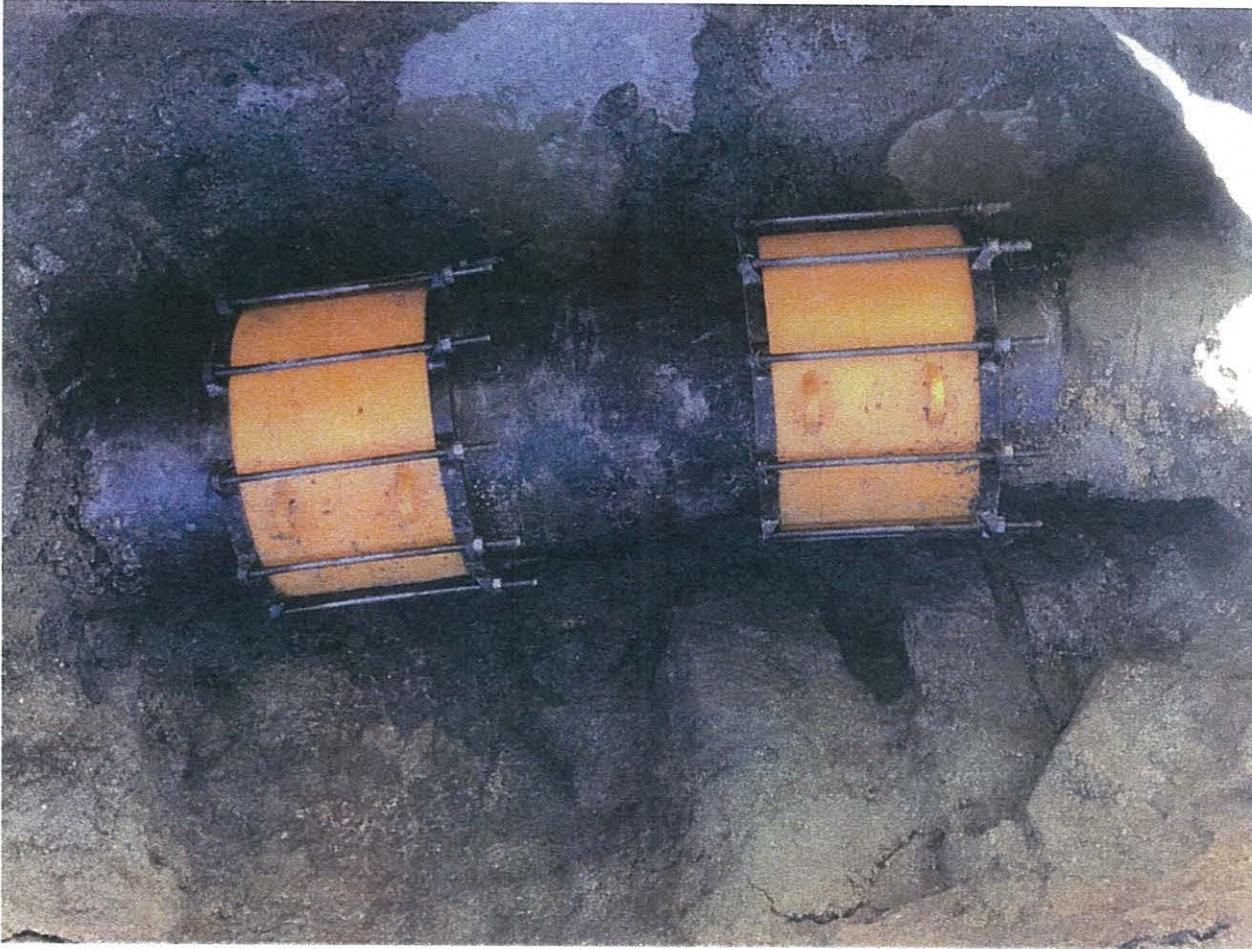
# Segment 3 – Fall 2019 Leaks

- September 26 – Repair Cost \$17,200
- November 5 – Repair Cost \$23,500
- December 26 – Repair Cost \$6,400
- Operating Expense in Sewer Fund
- First pipeline leaks in 2 years, since completed repairs to Segment 3 in Fall 2017.

# Dec 2019 Export Pipeline Leak On Bell – Spigot Joint



# Dec 2019 Export Pipeline Repair



Effluent Export System

Section 7

Priority Project Total Expenditures

2012 - 2019

# Effluent Export Priority Projects CIP Project Expenditures

Vendor/Item/Description	Expenditure
HDR Engineering Services	\$723,000
PICA – Condition Assessment	\$999,800
Equipment, construction and rentals associated with PICA Condition Assessment	\$334,000
NDOT Contract to repair 13 sites in 2017 (BOT 08/22/2017)	\$1,151,600
Environmental Assessment performed by USFS for TTD Bike Path with Pipeline (BOT 11/19/2014)	\$300,000
Installation of Air Relief Valves on Export Pipeline	\$643,400
IVGID Engineering Billings 2013-19	\$895,500
Export Pipeline Meters and equipment	\$86,500
Jacobs Engineering Services for Upper Pond TM	\$12,300
<b>2012 2019 CIP Expenses Total</b>	<b>\$5,146,100</b>

# Effluent Export System

## Section 8

Utility Fund Flow of Resources

Board Policy and Practices

Export Priority Projects

CIP Carry Forward



# Resource Flow as of June 30, 2019

Description	Value (\$)
June 30, 2019 CAFR Unrestricted Net Position	\$12,442,309
June 30, 2019 Effluent Export Carry Forward	\$9,656,890
June 30, 2019 Capital Carry Forward (Excluding Effluent Export Project)	\$1,498,400
Delayed Purchase of Vac Con Truck to 2019-20 per CAFR	\$416,564
June 30, 2019 Unrestricted Net Position minus Export and Capital Carry Forward and Vac Con Truck	\$870,455

# Working Capital Policy 19.1.0 & Practice 19.20

Item	YE 2018-19	Working Capital with 45 Days of Operating Expenses	Working Capital with 90 Days of Operating Expenses
Operational Expense 2019-20	\$7,140,000	\$881,000	\$1,761,000
Utilities Debt Service 1 Year	\$134,000	\$134,000	\$134,000
1 year average depreciation	\$2,950,000	\$2,950,000	\$2,950,000
Sum		\$3,965,000	\$4,845,000

The Utility Fund working capital on June 30, 2019 is \$6,391,000 from page 30 of the Comprehensive Annual Financial Report, (calculated as total current assets minus total current liabilities)

# Utility Level of Fund Balance Policy 7.1.0 & Practice 7.2.0

- The Level of Fund Balance is currently a projected minimum value of \$1.96 million.
- The net position for the utility fund on June 30, 2019 from page 30 of the Comprehensive Annual Financial Report is \$12,442,309.
- The Utility fund meets the Level of Fund Balance Policy/Practice target

Effluent Export System  
Section 9  
Board Direction on Strategy  
for  
Effluent Export Priority Projects

# Effluent Export Project Cost Reduction Strategy

- US Army Corps of Engineers Funding Support – Per Board Direction
  - Pursue Section 595 Federal funding support
  - Board authorized 3-year contract with Marcus Faust on May 1, 2019
  - Discussions with USACE Sacramento District and Nevada Delegation are on-going
  - Two requests for funding approved by Board on February 27, 2019 and submitted to USACE under Section 595

# Effluent Export Project Cost Reduction Strategy

- **Bike Path Co-Location – Per Board Direction**
  - January 9, 2013 - Authorized an Interlocal Agreement with Tahoe Transportation District (TTD) for Initial Scoping for Co-Location of the IVGID Export Pipeline with the SR-28 Bikeway
  - November 19, 2014-Authorized an Amendment to the Interlocal Agreement with TTD for Co-Location of the IVGID Export Pipeline with the SR-28 Bikeway in the amount of \$300,000 for Environmental Analysis

Effluent Export System  
Section 10  
Effluent Export Priority Project  
With Bike Path Co-Location

# Effluent Export Priority Project

- What does Priority Project look like **with** co-location. Bike Path Central Corridor Project
- Phase 1 Path Installation replaces 19,299 lf
- Phase 2 Path Installation replaces 10,400 lf
- Segment 3 Replacement in Phase 1
- Segment 2 Replacement in Phase 1 and 2



# Effluent Export Priority Project Cost Reduction with Co-Location

- Bike Path Co-Location – Per Board Direction
  - Co-location up to 24,632 LF (29,699 ft total - 5067 ft in SR 28)
  - Co-location of 7,318 of Segment 3 (push-on)
  - Co-location of 17,314 of Segment 2 (welded)
- Multiple Phases of Pipeline and Bike Path Construction
- Multiple Project Partners including NV Energy, NDOT and Fiber Optic

# Why Cost Reduction in Bike Path

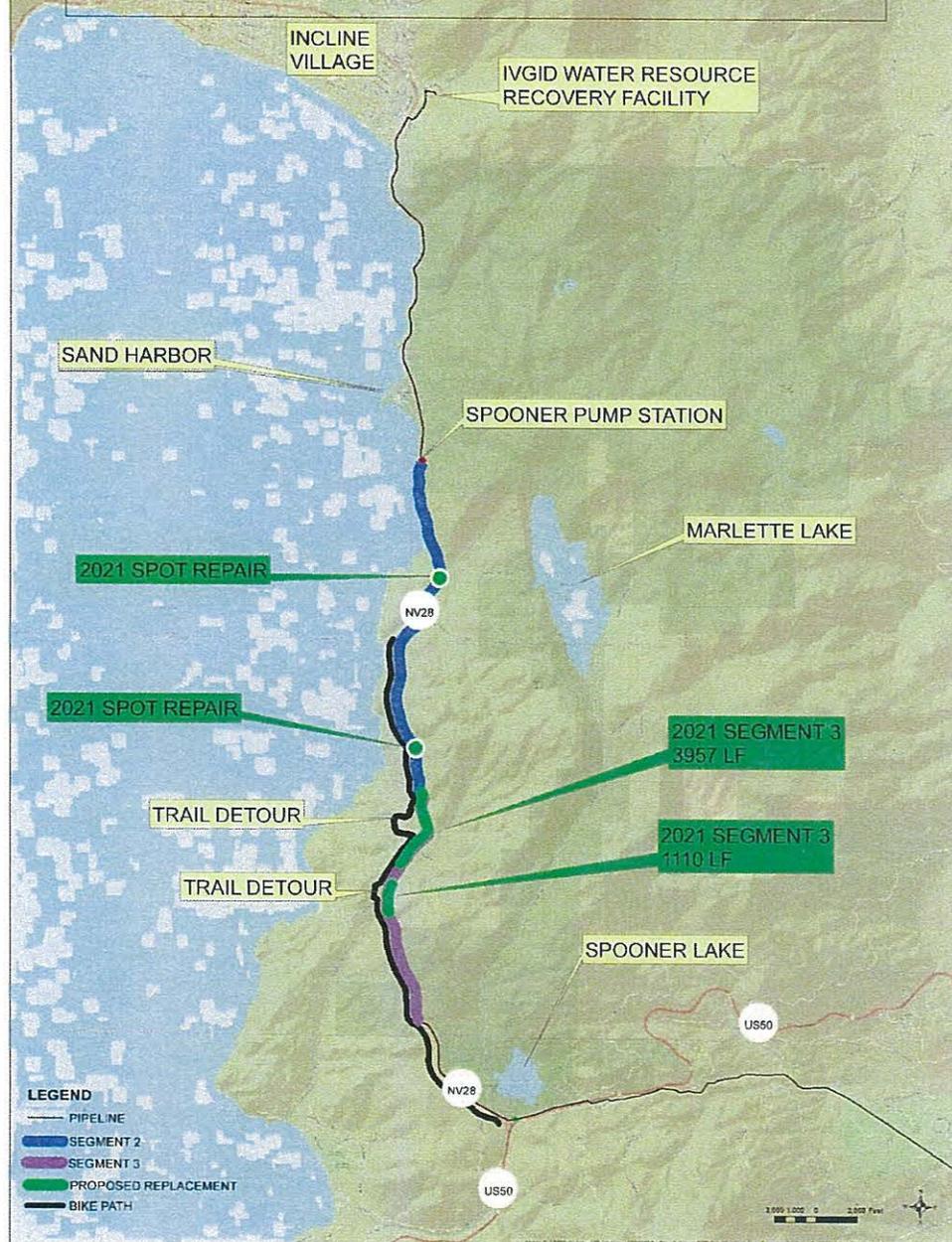
- Costs Not Incurred for Export Pipeline Construction with Bike Path Co-Location
  - Traffic Control on SR-28
  - Final 2” Overlay Paving for **whole** lane width, not just paving the pipe trench
  - Staging Area, mobilization
  - Also obtain cost sharing efficiencies in trench construction with Power and Fiber Optic utilities

# Cost Reduction with Bike Path Co-Location

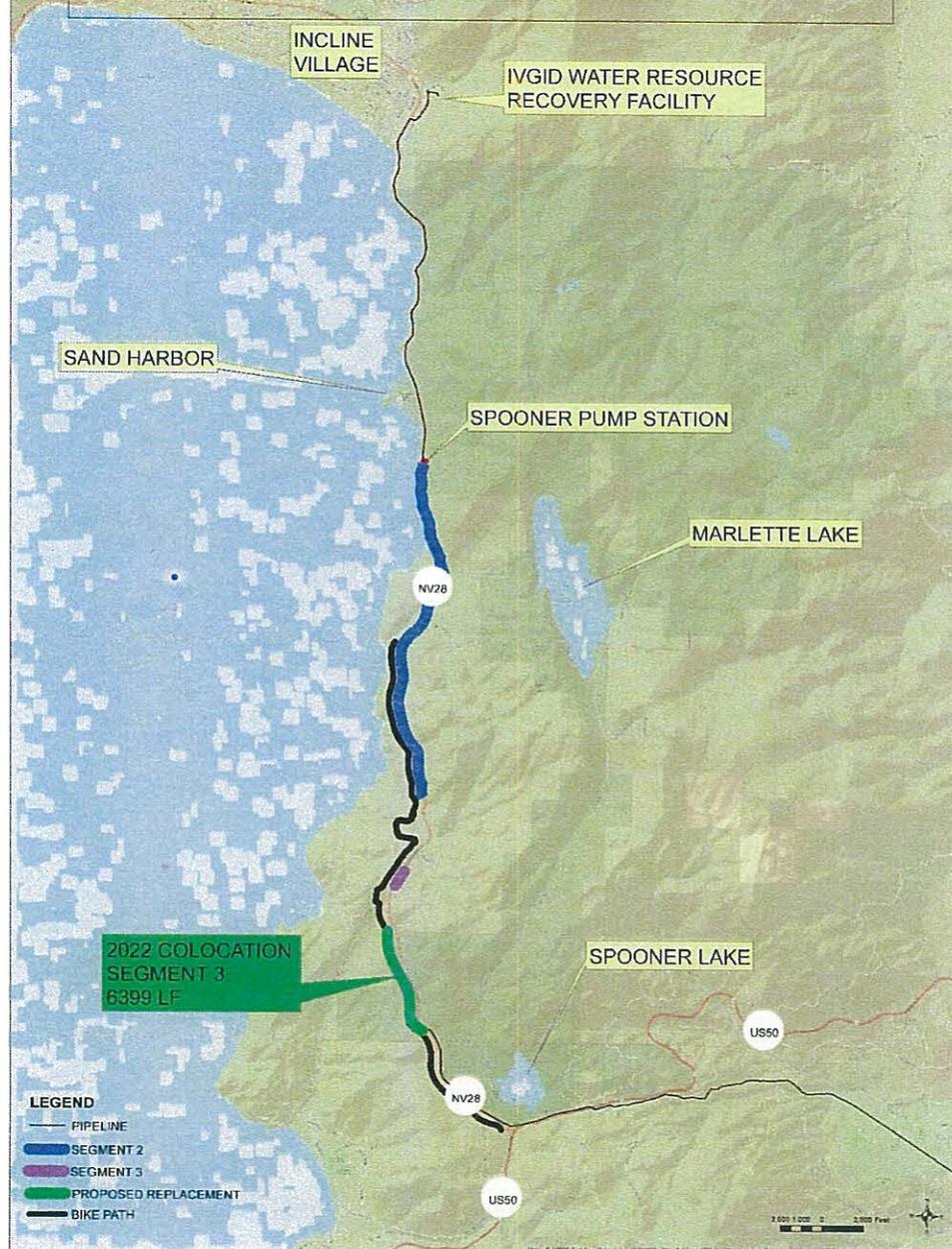
- Basis of Bid for Export Pipeline Repairs – 2017
- 70% of Bid For Pipe Installation
- 30% of Bid for SR 28 Specific Work
- Realize Savings shared with other Utilities  
(assumed 10% additional savings)

Item	Total Bid Price	Percent of Bid
BMPs	\$12,000	1%
Mobilization	\$102,000	10%
Traffic Control	\$117,000	12%
2" Coldmill and Final Overlay Paving	\$72,000	7%
Remove and Replace 16" Pipe	\$700,000	70%
Total	\$1,003,000	

# EFFLUENT EXPORT PIPELINE PLANNED PIPELINE REPLACEMENT 2021



# EFFLUENT EXPORT PIPELINE PLANNED PIPELINE REPLACEMENT 2022





# Effluent Export Priority Project with Co-location Construction Budget Estimate

Segment Section and Length	Bike Path Phase	Budget Estimate per Foot	Budget Estimate for Segment Section
Segment 3 5067 lf	Phase 1 - District 2021	\$1,000 / lf	\$5,067,000
Segment 3 7318 lf	Phase 1 – Co-locate 2022-23	\$600 / lf	\$4,391,000
Segment 2 6914	Phase 1 – Co-locate 2023	\$600 / lf	\$4,148,000
Segment 2 10,400 lf	Phase 2 – Co-locate TBD	\$ 600 / lf	\$6,240,000
Timing of two spot repairs to be determined. One spot repair location replaced by 2023 project		<b>Total Phase 1</b>	<b>\$13,606,000</b>
		<b>Total Phase 2</b>	<b>\$6,240,000</b>
		<b>Total all Phases</b>	<b>\$19,846,000</b>

# Effluent Export System

## Section 11

### Effluent Export Priority Project Without Bike Path Co-Location



# Effluent Export Priority Project

- What does Priority Project look like **without** co-location. District Project Only
- Years 2021 -23
  - Replaces 12,385 lf Segment 3
  - Complete two Segment 2 Repairs
- After Segment 3 Completion
  - Perform Condition Assessment of Segment 2
  - Re-establish timeline for repairs/replacement

# Effluent Export Priority Project without Co-location Construction Budget Estimate

Segment Section and Length	Bike Path Phase	Budget Estimate per Foot	Budget Estimate for Segment Section
Segment 3 12,385 lf 2021 – 23	None	\$1,000 / lf	\$12,385,000
Segment 2 2 x Spot Repairs 2021 – 23	None	\$50,000 each	\$100,000
Segment 2 17,314 lf After 2026	None	\$1,000 / lf	\$17,314,000
This table does not include Effluent Pond Lining \$2.7 million project estimate	<b>Total Phase 1</b>	<b>\$12,485,000</b>	
	<b>Total Phase 2</b>	<b>\$17,314,000</b>	
	<b>Total all Phases</b>	<b>\$29,799,000</b>	

Effluent Export System  
Section 12  
Effluent Export Priority Project  
Budget and Flow

# Effluent Export Priority Project

## CIP Budget and Flow – With Co-Location

Budget Year	Annual Expenses	Annual CIP Revenue	Carry Forward
June 30, 2019 Export Project Carry Forward			\$9,600,000
2019-20	\$100,000**	\$2,000,000	\$11,500,000
2020-21	\$5,067,000	\$2,000,000	\$8,433,000
2021-22* Includes Pond	\$7,101,000	\$2,000,000	\$3,332,000
2022-23	\$4,148,000	\$2,000,000	\$1,184,000
2023-24	TBD	\$2,000,000	\$3,184,000
TBD 2 yr Project 2024-26	\$6,240,000	\$4,000,000	\$944,000
<b>Subtotals</b>	<b>\$22,656,000</b>	<b>\$14,000,000</b>	

Segment 3 would be replaced and 6,914 feet of Segment 2 would be replaced. There would 10,400 feet of Segment 2 to be replaced in a TBD Bike Path Project – shown in 2023-24

# Effluent Export Priority Project

## Budget and Flow – Without Co-Location

Budget Year	Annual Expenses	Annual CIP Revenue	Carry Forward
June 30, 2019 Export Project Carry Forward			\$9,600,000
2019-20	\$100,000	\$2,000,000	\$11,500,000
2020-21	\$6,200,000	\$2,000,000	\$7,300,000
2021-22* Includes Pond	\$8,910,000	\$2,000,000	\$390,000
2022-23	\$0	\$2,000,000	\$2,390,000
2023-24	\$0	\$2,000,000	\$4,390,000
2024-25	\$500,000	\$2,000,000	\$5,890,000
	\$15,710,000	\$12,000,000	
\$17,314,000 needed for Segment 2 Construction after 2025			

Segment 3 would be replaced in 2 years. 17,314 of Segment 2 to be replaced in future. Segment 2 would be rescheduled for condition assessment and future replacement.

# Effluent Export Priority Project Funding Alternatives

- Funding shortfall without co-location and without US Army Corps Section 595
- \$2 million per year provides debt service for \$16 million Bond at 4% interest over 10 years.
- Accumulating \$2 million per year may achieve the \$17,314,000 needed in 2031 for Segment 2
- Perform future condition assessment on Segment 2 and repair Segment 2 to extend life

Effluent Export System

Section 13

Effluent Export Priority Project

Effluent Pond Lining

# Effluent Pond Lining Project

- Schedule
  - March 13, 2018, Scope of Engineering Services with CH2M Hill for WRRF Effluent Storage Management
  - September 28, 2018, WRRF Effluent Storage Alternative Analysis (Final Draft)
  - February 27, 2019 – Board approves submitting Scope of Work and Certificate of Authority and Certification Regarding Lobbying to the US Army Corps for Section 595 Funding Consideration.
  - Project Estimate = \$2,710,000

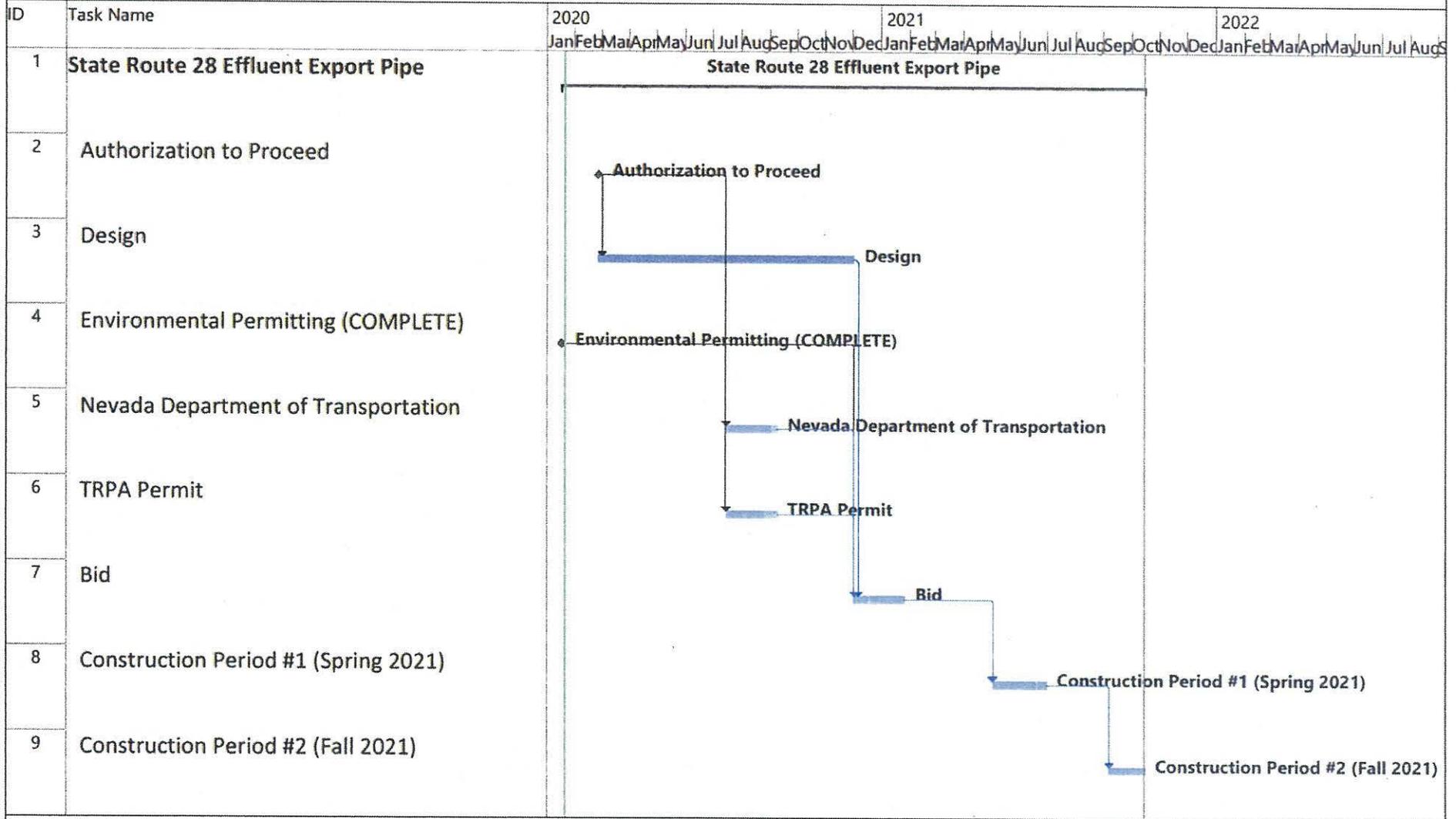


Effluent Export System  
Section 14  
Effluent Export Priority Project  
Accelerated Schedule

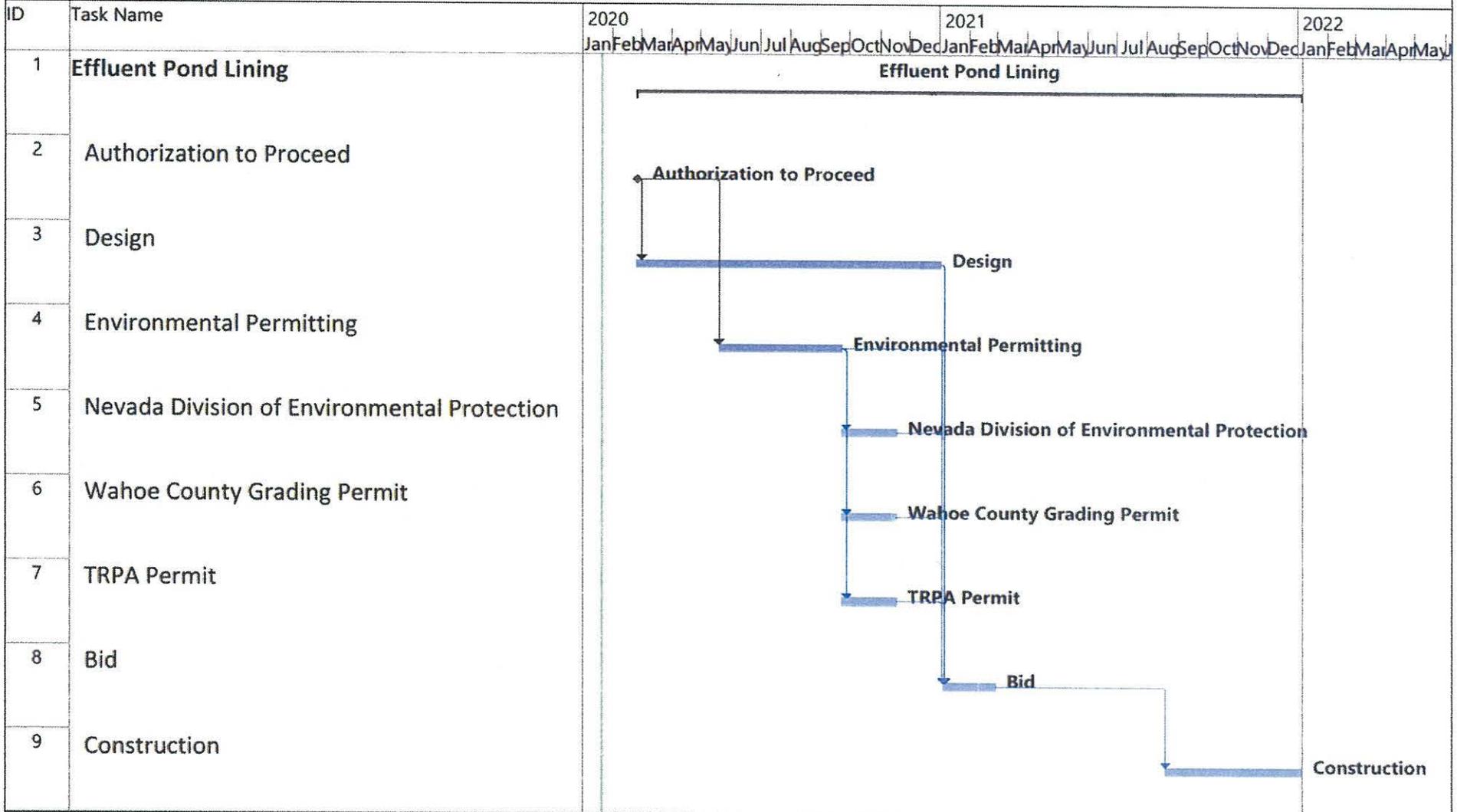
# Effluent Export Priority Projects Accelerated Project Schedule

- 2020 - Design and Permitting minimum of 5,067 lf of Segment 3 and Segment 2 spot repairs
- 2020 - Design and Permitting of Pond Lining Project
- 2021 – Construction of 5,067 lf of Segment 3
- 2021 – Construction of Pond Lining Project
- 2022 and Beyond– Pipeline Replacement schedule based on Board Direction of Co-location participation

**IVGID SR28 Effluent Export Pipe  
Preliminary Project Schedule**



**IVGID Effluent Pond Lining  
Preliminary Project Schedule**



# Section 15 Recommendation

- Review, discuss and provide direction on the Effluent Export Project – Phase II – Fund: Utility; Division: Sewer; Project 2524SS1010.
- Direct Staff to
  - Reallocate Carry Forward from Phase II to the Effluent Export System
  - Establish Effluent Export System - Pond Lining Project
  - Establish Effluent Export System - Pipeline Project - Replace 5067 If of Segment 3 in SR-28
  - Provide regular Effluent Export System Project Update in the General Manager Report
- Future Actions
  - TTD Co-Location Design Phase Agreement 2020
  - Effluent Export System - Pipeline Segment 3 Co-locate or no Co-locate Decision
  - Effluent Export System - Pipeline Segment 2 Co-locate or no Co-locate Decision

**ADMINISTRATIVE ORDER ON CONSENT**

This Administrative Order on Consent is made and entered into this 3 day of

RECEIVED December, 2014 by and among the State of Nevada through the Department of  
ENVIRONMENTAL PROTECTION

NOV 12 2014 Conservation and Natural Resources, Nevada Division of Environmental Protection (the  
"NDEP") and Incline Village General Improvement District ("IVGID").

**I.**

**STATEMENT OF PURPOSE**

1. By entering into this Consent Order, the mutual objectives of the NDEP and IVGID are to develop and implement the plans required to maintain compliance with the Nevada Revised Statutes and the Nevada Administrative Code for the handling of treated effluent and to assure the protection of human health and the environment. Upon completing the activities required herein, and any additional activities that may be required as a result of the information provided in accordance with this AOC, as approved by the NDEP, the NDEP will consider IVGID in compliance with permit NS0030009. Specifically, the NDEP will consider IVGID in compliance with the requirement to address evaluation and repair of the effluent export pipeline.

2. The NDEP and IVGID agree that the pipeline shall be evaluated for structural integrity and a plan for repair or replacement be prepared and implemented to mitigate the risk of future releases in the Tahoe Basin.

**II.**

**BACKGROUND**

**WHEREAS**, pursuant to NRS 445A.305 it is the policy of the State of Nevada to maintain the quality of the waters of the State consistent with the public health and

enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, the pursuit of agriculture, and the economic development of the State; and to encourage and promote the use of methods of waste collection and pollution control for all significant sources of water pollution.

**WHEREAS**, pursuant to NRS 445A.445, the Director of the Department of Conservation and Natural Resources by and through the NDEP administers the Nevada Water Pollution Control Law and develops comprehensive plans and programs for preventing, reducing or eliminating pollution and controlling injections through wells to prevent the degradation of existing or potential underground sources of drinking water.

**WHEREAS**, pursuant to NRS 445A.465, injection of fluids through a well or discharge of pollutant without a permit is prohibited.

**WHEREAS**, pursuant to NRS 445A.500 permits issued by the Department of Conservation and Natural Resources:

. . . must ensure compliance with the following factors whenever applicable to the discharge or the injection of fluids through a well for which the permit is sought:

- (a) Effluent limitations;
- (b) Standards of performance for new sources;
- (c) Standards for pretreatment;
- (d) Standards for injections of fluids through a well; and
- (e) Any more stringent limitations, including any necessary to meet or effectuate standards of water quality, standards of treatment or schedules of compliance developed by the

Department as part of a continuing planning process or area wide plan for the management of the treatment of waste under NRS 445A.580 or in furthering the purposes and goals of NRS 445A.300 to 445A.730, inclusive.

2. Each permit must specify average and maximum daily or other appropriate quantitative limitations for the level of pollutants or contaminants in the authorized discharge or injection.

**WHEREAS**, pursuant to NRS 445A.515, if any discharge does not comply with the provisions of NRS 445A.500 and 445A.505, the Department of Conservation and Natural Resources must require the permit holder to take specific steps to comply.

**WHEREAS**, pursuant to NAC 445A.259, the holder of a permit at all times must maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the holder to achieve compliance with the terms and conditions of the permit.

**WHEREAS**, IVGID owns the pipeline identified in paragraph 1 of Section I, and operates the facilities under permit conditions set forth in the issued permit NS0030009.

**WHEREAS**, a failure in the effluent export pipeline on April 17, 2014 resulted in an unauthorized discharge.

**WHEREAS**, NDEP issued a Finding of Alleged Violation and Order on June 17, 2014.

**WHEREAS**, a meeting on August 8, 2014 between NDEP and IVGID resulted in IVGID submitting a proposed compliance plan to NDEP.



WHEREAS, the agreed upon compliance schedule and conditions are outlined herein.

**III.**

**JURISDICTION**

Pursuant to NRS 445A.445 and NRS 445A.450, the NDEP has the authority, as delegated by Director of the Department of Conservation and Natural Resources, to issue this AOC in accordance with the provisions of NRS 445A.660, 445A.675 and 445A.690 to prescribe the necessary corrective action to be taken, and a reasonable time to complete the corrective action.

**IV.**

**PARTIES BOUND**

1. The provisions of this AOC shall apply to and be binding upon IVGID, their successors, and assigns.

2. Any change in ownership or corporate status of IVGID, including, but not limited to, any transfer of assets of real or personal property, shall in no way alter the Parties responsibilities under this AOC.

4. In the event of any change in ownership, or in the event of any change in majority ownership or control of IVGID, IVGID shall notify NDEP in writing of the nature of any such change no later than (15) calendar days after the effective date of such change. Nothing stated in this paragraph shall relieve the parties from complying with the terms and conditions of this AOC in the time and manner specified herein.

**V.**

**DEFINITIONS**

1. "AOC" means this Administrative Order on Consent.
2. "Effective Date" means the date upon which this AOC is executed by the NDEP as the last Party executing this AOC, after it having previously been signed by IVGID.
3. "NDEP" means the Nevada Division of Environmental Protection.
4. "Effluent export pipeline" means the pipeline carrying treated effluent from the Incline Village General Improvement District Wastewater Treatment Facility to receiving waters named in permit # NS0030009.

#### VI.

##### ASSESSMENT OF EFFLUENT EXPORT PIPELINE

1. IVGID will perform an evaluation of effluent export pipeline integrity. IVGID will provide a report to NDEP which summarizes the evaluation and identifies areas of concern.
2. Upon review, NDEP and IVGID will develop an amendment to this AOC which provides a schedule for repair or replacement of the effluent export pipeline.

#### VII.

##### SCHEDULE FOR COMPLETION

1. IVGID shall present to NDEP for review an evaluation of the effluent export pipeline by **March 15, 2015**.
2. NDEP and IVGID shall produce an amendment to this AOC which outlines a schedule to complete repair or replacement of the effluent export pipeline by **April 30**,

2015.

## VIII.

### GENERAL PROVISIONS

1. By entering into this AOC, IVGID does not admit to any violation of applicable laws or conditions of the Permit.
2. By entering into this AOC, IVGID agrees to the terms herein and hereby waives its right to appeal the AOC pursuant to NRS 445A.605.
3. **Compliance with Applicable Law.** All activities undertaken by IVGID pursuant to this AOC shall be performed in accordance with the requirements of all applicable Environmental Laws and all applicable laws of the State of Nevada.
4. **IVGID's Indemnification of the NDEP.** The NDEP does not assume any liability by entering into this AOC. The NDEP preserves all limitations on liability as provided by NRS Chapter 41.
  - a. IVGID shall indemnify, save and hold harmless the State, and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of IVGID, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this AOC.
  - b. IVGID shall not be considered an agent, contractor, or subcontractor of the NDEP. Further IVGID agrees to pay the NDEP all reasonable costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement

arising from, or on account of, such claims made against the State based on negligent or other wrongful acts or omissions of IVGID, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this AOC.

c. This indemnity shall not apply to the extent the acts or omissions of the State, or any of its employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, gave rise to such claims.

d. IVGID's liability to the NDEP under this indemnity shall be limited to the amount represented by IVGID's proportionate fault with respect to such claim as determined by a court of competent jurisdiction.

e. Other than this AOC, the State shall not be held out as a party to any contract entered into by or on behalf of IVGID in carrying out activities pursuant to this AOC.

5. **Force Majeure.** IVGID shall perform the requirements of this AOC within the time limits prescribed, unless the performance is prevented or delayed by events that constitute a force majeure. IVGID shall have the burden of proving such a force majeure. A force majeure, for purposes of this AOC, is defined as any event arising from causes not reasonably foreseeable or beyond the reasonable control of IVGID, or of any person or entity controlled by IVGID, which delays or prevents the timely performance of any obligation under this AOC despite IVGID's best efforts to fulfill such obligation. A force majeure may include, without limitation: extraordinary weather events, natural disasters, strikes and lockouts, national emergencies, wars, acts of terror, delays in obtaining access or use of property not owned or controlled by IVGID despite timely best efforts to obtain

such access or use approval, and delays in obtaining any required approval or permit from the NDEP or any other public agency that occur despite IVGID's complete, timely and appropriate submission of all information and documentation required for approval or applications for permits within a timeframe that would allow IVGID to proceed in a manner contemplated by the schedule of the AOC. A force majeure does not include (i) increased costs of the activities to be performed under the AOC, or (ii) financial inability to complete the activities to be performed under the AOC.

6. **The NDEP's Rights to Compel Further Actions.** Notwithstanding any other provision of this AOC, the NDEP reserves, and this AOC is without prejudice to, the right to institute new civil or administrative proceedings, or to issue an administrative order seeking to compel IVGID:

- a. to perform further actions relating to matters not the subject of activities approved by the NDEP and being performed by IVGID; or
- b. to reimburse the NDEP for costs of response if (i) conditions at the effluent export pipeline, previously unknown to the NDEP, are discovered, or (ii) information, previously unknown to the NDEP, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the corrective activities set forth in this AOC are not protective of human health or the Environment.
- c. to comply fully with permit NS0030009.

7. **General Reservations of Rights.** The NDEP reserves and this AOC is

without prejudice to, all rights against IVGID WITH respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by IVGID to meet a requirement of this AOC;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Environmental Contaminants outside of the effluent export pipeline;
- c. liability for future disposal of Environmental Contaminants, other than as provided in this AOC, or otherwise ordered by the Division;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or State law which occur during or after implementation of the activities required under this AOC.

8. **The NDEP's Reservations of Rights.**

a. The NDEP reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to IVGID's failure to comply with any of the requirements of this AOC or of any requirement of federal or state laws, regulations, or permit conditions. Except as otherwise provided in this AOC, this AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the NDEP has under any applicable Environmental Law or common law authority of the State. This AOC

in no way relieves IVGID of its responsibility to comply with any federal, State, or local law or regulation.

b. The NDEP reserves the right to disapprove the activities performed by IVGID pursuant to this AOC.

c. The NDEP reserves any and all legal rights and equitable remedies available to enforce (1) the provisions of this AOC, or (2) any applicable provision of State or federal law.

d. Notwithstanding any other provision of this AOC, the NDEP retains all authority and reserves all rights to take any and all response actions authorized by law.

9. **The AOC is not a Permit.** This AOC is neither a permit nor a modification of a permit.

10. **The NDEP Approval is not a Warranty.** IVGID acknowledges and agrees that the NDEP's approval of any plan required hereunder does not constitute a warranty or representation that the plan will achieve the requirements of the AOC.

11. **Modification.** This AOC may be modified or amended only upon the mutual agreement of IVGID and NDEP. Any agreed upon amendment or modification shall be in writing, shall be signed by all Parties, shall have as its effective date the date on which it is signed by the State as the last Party executing the amendment or modification, and shall, upon that date, be incorporated into and made enforceable under this AOC.

12. **Governing Law.** The provisions and interpretation of this AOC shall be governed by the laws of the State of Nevada without regard to the choice of law principles thereof. This AOC shall be interpreted to effectuate the intent and purpose of any

applicable provision of environmental laws.

13. **Other Applicable Laws.** All actions required to be taken pursuant to this AOC shall be undertaken in accordance with the requirements of all applicable local, State, and federal laws and regulations. IVGID shall obtain or cause their representative(s) to obtain all permits and approvals necessary under such laws and regulations.

14. **Severability.** If any provision or authority of this AOC or the application of this AOC to any Party or circumstances is held by any judicial or administrative authority to be invalid, and such holding does not result in a material change in the rights or obligations of IVGID, the application of the remainder of the AOC shall remain in force and shall not be affected thereby.

15. **Effective Date.** This AOC shall become effective on the date upon which it is executed by the NDEP as the last Party executing this AOC, after it having previously been signed by IVGID ("Effective Date"). This AOC may be executed in separate counterparts.

16. **Termination.** This AOC shall terminate on the NDEP's approval of all activities set forth in, or arising from, this AOC, as well as the amendment to the AOC including the schedule for repair or replacement of the effluent export pipeline. Any and all obligations of IVGID created hereunder shall be deemed satisfied upon Completion.

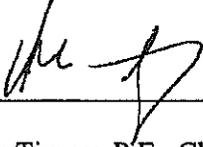
17. **Signatories/Service.** Each undersigned representative to this AOC certifies that he or she is fully authorized by the Parties whom he or she represents to enter into the terms and conditions of this AOC and to execute and legally bind such Parties to this document.



IN WITNESS WHEREOF, the Parties execute this Administrative Order on  
Consent by their duly authorized representatives.

IT IS SO AGREED AND ORDERED.

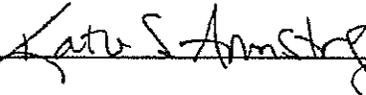
The State of Nevada:

By:  Date: 12/3/14  
Alan Tinney, P.E., Chief  
Bureau of Water Pollution Control  
Nevada Division of Environmental Protection

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT:

By:  Date: 11/7/14  
Joe Pomroy, P.E., Director of Public Works

Approved as to form:

By:  Date: 12/1/14  
Katie S. Armstrong, Deputy Attorney General  
Nevada Attorney General's Office  
State of Nevada



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

**STATE OF NEVADA**  
Department of Conservation & Natural Resources  
Steve Sisolak, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

May 9, 2019

Joseph J. Pomroy P.E.  
Director of Public Works  
Incline Village General Improvement District  
1220 Sweetwater Rd  
Incline Village, NV

**Re: CLOSE OUT LETTER – Notice of Violation # AOC120314W1**  
PERMIT NUMBER: NS0030009 - Case Closure

Dear Mr. Pomroy,

The Nevada Division of Environmental Protection (Division) has reviewed all submitted information for this Administrative Order on Consent (AOC) **AOC120414W1** for the Assessment of the Effluent Export Pipeline and agrees the conditions of the AOC, issued on December 03, 2014, have been fully satisfied. Therefore, **AOC120414W1** between Incline Village General Improvement District and the Division is hereby closed.

If you have any further questions, please contact me through phone (775) 687-9435, or through email at [kpascual@ndep.nv.gov](mailto:kpascual@ndep.nv.gov) with questions or comments regarding this matter.

Sincerely,

Katrina A. Pascual, PE,  
Supervisor, Technical, Compliance, and Enforcement Branch  
Bureau of Water Pollution Control

## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Steven J. Pinkerton  
General Manager

**FROM:** Joseph J. Pomroy, P.E.  
Director of Public Works

Charley Miller, P.E.  
Engineering Manager

**SUBJECT:** Review, Discuss, and Authorize Chair and Legal Counsel to sign the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Basin Storage Improvements Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

**STRATEGIC PLAN:** Long Range Principle 5 – Assets and Infrastructure

**DATE:** February 15, 2019

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### **I. RECOMMENDATION**

That the Board of Trustees moves to authorize Chair and Legal Counsel to execute the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Basin Storage Improvements Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

### **II. DISTRICT STRATEGIC PLAN**

Long Range Principle #5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- Complete condition analysis and project scoping for the Effluent Export Project – Phase II and continue to pursue project partnerships and federal funding to reduce District costs.

### **III. BACKGROUND**

Incline Village General Improvement District (IVGID) currently owns, operates and maintains an existing earthen basin at its water resource recovery facility (WRRF) to temporarily store WRRF effluent for brief durations. The existing basin has a storage capacity of approximately 2 million gallons (MG) and is unlined and not permitted for use by NDEP. The Effluent Export Project Phase II includes the lining of the effluent pond at the WRRF for near and long term purposes. The scope of work that also includes a cost estimate for this project follows this memorandum. The District now has the opportunity to submit this project to the United States Army Corps of Engineers (USACE) for a Design and Construction Assistance Agreement under Section 595 of the Water Resources Development Act 1999 and its amendments.

The District has had a long positive working relationship with the USACE in funding and constructing infrastructure and environmental improvement projects since 2002. The District has received \$15.5 million dollars through the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016) Section 595 Program for the Effluent Export Project. The WIIN Act was formerly called the Water Resources Development Act. The District has also received \$6 million from the Lake Tahoe Restoration Act Section 108 Program for funding Environmental Restoration Projects that was matched with \$2 million of State of Nevada Funding for Mill, Incline and Third Creeks Restoration Projects.

The District and the District's Legislative Advocate, worked with the Nevada Delegation and other western states on raising the authorization of the Section 595 Program of the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016). Nevada will be collaborating on Rural Section 595 with five other states, New Mexico, Montana, Wyoming, Idaho and Utah, who already have projects which qualify under Section 595. The new Section 595 Program increased the authorization limit by \$100 million over the previous limit to allow new annual appropriations through the Federal Budget process.

New language was inserted into Section 595 that clarifies that funding caps do not apply to individual States and that unspent monies can be re-allocated to priority projects in any state. This was an extremely important piece of language to have added because the US Army Corps was not open to discussing a new Project Partnership Agreement because they had interpreted that Nevada had spent their allocation of funds under Section 595.

In 2017, Staff and Marcus Faust worked with the US Army Corps staff in Sacramento and US Army Corps staff in Washington on bulletins describing this new language change. This provided the opportunity for the District to pursue a new Project Partnership Agreement with the USACE.

#### **V. FINANCIAL IMPACT AND BUDGET**

The Effluent Storage Basin Improvements is included in the District's Capital Improvement Budget under the Effluent Export Line – Phase II Project. The Design and Construction Assistance Agreement provides up to 75% reimbursement of qualifying expenses as specified in the agreement. The current scope of work has the following project budget for the Effluent Storage Basin Improvements and shows the cost share components.

<b>Estimated Project Total</b>		<b>\$2,710,000</b>
USACE Share	75%	\$2,032,500
IVGID Share	25%	\$677,500

#### **VI. ALTERNATIVES**

None proposed.

#### **VII. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.



**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
ENGINEERING DIVISION TECHNICAL MEMORANDUM**

**TO:** LAURA WHITNEY/USACE SACRAMENTO DISTRICT

**FROM:** JOSEPH J. POMROY, P.E./IVGID

**SUBJECT:** IVGID EFFLUENT STORAGE BASIN IMPROVEMENTS PROJECT SCOPE OF WORK

**DATE:** FEBRUARY 15, 2019

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**BACKGROUND**

The Incline Village General Improvement District (IVGID or District) operates a wastewater collection, treatment, and effluent export system that serves the communities of Incline Village and Crystal Bay, NV and the Nevada State Parks (Sand Harbor, Spooner and Memorial Point) located at Lake Tahoe. A critical component of this operation is the 2.4 million gallon primary effluent storage basin located adjacent to the wastewater resource recovery facility (Plant). This storage basin was designed to provide automated back-up effluent storage in the event the Plant's 500,000 gallon effluent storage tank fills to capacity. By lining the storage basin, it will allow for effluent storage during emergency situations and planned effluent pipeline repair and replacement construction projects. The lining will also eliminate the need to retreat this effluent through the Plant, speeding recovery from the incident. Depending on the time of year and associated influent flows at the Plant, the primary effluent storage basin can provide between 1.6 and 3.2 days of storage. The primary storage basin also ensures there is adequate storage capacity to accommodate a multiple day power outage that interrupts Plant operations.

As a condition of IVGID's current operating permit with the Nevada Department of Environmental Protection (NDEP), the District is no longer allowed to utilize the primary effluent storage basin for storage because it is unlined. This significantly hampers the District's ability to conduct planned maintenance of the effluent export system and puts IVGID at risk of a discharge of effluent to the waters of Lake Tahoe in the event of a significant emergency.

**EFFLUENT STORAGE IMPROVEMENTS PROJECT**

Analysis conducted as a component of the IVGID Effluent Export Project Predesign Report July 2004 indicates that, due to the regulatory limitations associated with the use of the Primary Effluent Storage Basin, there is insufficient operational storage available to IVGID to provide adequate redundancy and reliability of the effluent export system.

The following improvements are proposed to be completed to allow routine use of the Primary Effluent Storage Basin:

- 1) Clear, grub, and re-grade the Primary Effluent Storage Basin.
- 2) Construct improvements to allow impervious containment of effluent within the Primary Effluent Storage Basin.

- 3) Install fencing around the basin periphery for security and safety.
- 4) Construct mechanical improvements to allow the Primary Effluent Storage Basin to be operated in conjunction with the Effluent Storage Reservoir.
- 5) Replace and automate existing piping, pumping system, and controls to allow unattended operation of the Primary Effluent Storage Basin.

### **ENVIRONMENTAL ASSESSMENT**

An Environmental Assessment is anticipated to be required for this project. The USACE will be the lead agency and perform all field work and document composition with assistance from the District staff.

As a reference, the District completed an Environmental Assessment to allow previous effluent export system improvements. The Environmental Assessment was completed in October 2004 with a Finding of No Significant Impact, issued by the USACE. The area of impact for the recommended improvements to the Primary Effluent Storage Basin is contained within the Environmental Assessment's Project Area and studied as a component of the project analysis.

### **PROJECT WORK TO DATE**

The following work has been completed or is underway to allow implementation of the Primary Effluent Storage Basin improvements:

- Expansion of the access road around the wastewater treatment plant to improve ingress/egress to allow construction of improvements to the Primary Effluent Storage Basin. This work included the purchase of an adjacent parcel.
- A contract with a consulting engineer is currently underway to complete pre-design analysis that evaluates alternatives, makes recommendations, completes preliminary design, and develops construction cost estimates to implement the above listed effluent storage recommendations. This work was completed in September 2018.

### **CONCEPTUAL PROJECT MILESTONES**

- Complete pre-design analysis – September 2018
- Final design and environmental entitlement – March 2019 - September 2019
- Project bidding and contract award – December 2019 - January 2019
- Project construction – July 2020 - October 2020

**CONCEPTUAL PROJECT BUDGET**

<b>Project Component</b>	<b>Estimated Cost</b>
Site Civil	\$200,000
Reservoir Improvements	\$1,200,000
Piping, Mechanical, & Controls	\$275,000
Subtotal	\$1,675,000
Contingency (20% of Subtotal)	\$335,000
<b>Construction Estimate</b>	<b>\$2,010,000</b>
Pre-Design	\$50,000
Final Design	\$250,000
Environmental Documentation	\$75,000
Construction Administration & Management	\$200,000
IVGID Project Administration & Management	\$125,000
<b>Estimated Project Total</b>	<b>\$2,710,000</b>
USACE Share (75%)	\$2,032,500
IVGID Share (25%)	\$677,500

**ESTIMATED FISCAL YEAR(FY) BUDGET**

<b>FY 2019</b>	<b>Estimated Cost</b>
Pre-Design, Final Design, Environmental Documentation	\$300,000
IVGID Project Administration & Management	\$75,000
Subtotal	35,000
	\$410,000
<b>FY 2020</b>	<b>Estimated Cost</b>
Construction	\$2,010,000
Construction Administration & Management	200,000
IVGID Project Administration & Management	90,000
Subtotal	\$2,300,000
<b>Total</b>	<b>\$2,710,000</b>

**PROJECT LOCAL SHARE**

IVGID presently has sufficient funds in Utility Fund Reserves to provide the necessary project local share.



SECTION 595 – WRDA 1999, AS AMENDED

ENVIRONMENTAL INFRASTRUCTURE

IDAHO, MONTANA, RURAL NEVADA, NEW MEXICO, RURAL UTAH, AND  
WYOMING

MODEL AGREEMENT  
FOR  
DESIGN AND CONSTRUCTION  
ASSISTANCE

(WORK PERFORMED BY NON-FEDERAL SPONSOR)

OCTOBER 25, 2005  
REVISED - NOVEMBER 19, 2005  
REVISED - JULY 15, 2009

**APPLICABILITY.** – The attached model agreement is one of six models for the provision of environmental assistance to non-Federal interests in Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (Section 595) projects. The following descriptions of the six models are provided to assist in determining the correct model to be used for your project. None of the models discussed below should be used for the provision of environmental infrastructure assistance pursuant to any other authority. Models for the provision of environmental infrastructure assistance pursuant to other authorities can be found in the approved model section of the PCA Web page. If there is no approved model posted in the approved model section of the PCA Web page that is applicable to your particular environmental infrastructure authorization, the District Project Delivery Team should consult with the appropriate HQ RIT for guidance on drafting the appropriate agreement.

*Section 595 Non-Federal Design and Construction* – The attached model should be used for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.

*Section 595 Non-Federal Design* – Use only for Section 595 projects when the

sponsor requests design for the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

*Section 595 Non-Federal Construction* – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

*Section 595 Federal Design* – Use only for Section 595 projects when the sponsor requests design for the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

*Section 595 Federal Construction* – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the construction. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

*Section 595 Federal Design and Construction* – Use only for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design or construction. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.

NOTES. – The following pages (iv – xi) contain numbered notes to assist in drafting an agreement for your project using this model. Throughout the model agreement, there are references to the numbered notes (example: [SEE NOTE – 7]) to direct you to the appropriate note that provides explanation and guidance on use of optional language or

information required to fill in the blanks. Several of the notes are general in nature and should be reviewed and discussed with the sponsor during preparation of the draft agreement for your project.

**OPTIONAL LANGUAGE.** – The use of optional language allows the model to be applicable to a larger universe of projects. Many of the numbered notes (example: [SEE NOTE – 8]) require you to choose between multiple versions of language or to choose whether or not to include a paragraph, sentence, or phrase depending on the specifics of your project. In many cases optional language to address a concept, such as the sponsor performing non-Federal design and construction work, is required in numerous locations throughout the agreement. Each of these locations has been identified with numbered notes; however, it is important to ensure that, if the optional language addressing a certain concept is included in one location, it is also included in all other appropriate locations. Correct use of the optional language is not considered a deviation from the model.

**BLANKS.** – There are numerous locations where information specific to your project is required to fill in a blank. All of the blanks must be filled in, except the date in the first paragraph, prior to forwarding the agreement for review. Including the information required to fill in a blank is not considered a deviation from the model.

**DEFINED TERMS SHOWN IN ITALICS.** – Throughout the agreement the terms defined in Article I are shown in italics. Do not remove any of the *italics* from the agreement.

**NOTES:**

**1. FORMAT.** - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the agreement prior to forwarding for review. **Reminder: Do not remove any of the *italics* from the agreement.**

**2. SECTION 595 TERMINOLOGY.** - The Section 595 program envisions a wide array of different types of projects, some of which do not fit the typical definition of construction. As a result, the terms “construction” and “construct” used throughout the agreement, may not be appropriate for all types of projects. Therefore, substitution throughout the agreement as appropriate, of “implementation” and “implement” for projects consisting of non-structural type activities or “construction and implementation” and “construct and implement” for projects that are a combination of typical construction and non-structural type activities is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

**3. MULTIPLE SPONSORS.** - In the event there are two or more entities serving as the sponsors for the project, and there is no division of responsibilities between or among them, the agreement can be modified to identify all the entities collectively as the “Non-Federal Sponsors”. However, it should be explained to all entities that the term “Non-Federal Sponsors” is construed to hold multiple sponsors jointly and severally responsible for compliance with all agreement obligations. The changes outlined below are required to identify all entities collectively as “Non-Federal Sponsors” and are not considered a deviation from the model.

**A.** Modify title to include name of each entity serving as a sponsor.

**B.** Modify first paragraph to include name of each entity serving as a sponsor. (Example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the “Non-Federal Sponsors”))

**C.** Change “Non-Federal Sponsor” to “Non-Federal Sponsors” throughout the agreement. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase “Non-Federal Sponsors” to reflect multiple sponsors (i.e. “its” to “their” or “assumes” to “assume”, etc.).

**D.** On the signature page, a separate signature block will be required for each entity serving as a sponsor.

**E.** A separate Certificate of Authority will be required for each entity serving as a sponsor.

**F.** A Certification Regarding Lobbying must be signed by each signatory to the agreement.

**4. GOVERNMENT REPRESENTATIVE.** – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. (Example: U.S. Army Engineer, Mobile District)

**5. REFERENCE TO NON-FEDERAL SPONSOR.** - Use “Non-Federal Sponsor”, “Local Sponsor”, “State”, “County”, “Commonwealth”, “Territory” or other identifier as preferred by the sponsor in the parenthetical phrase and consistently throughout the agreement. This change is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

**6. NON-FEDERAL SPONSOR REPRESENTATIVE.** – Insert the title of the sponsor’s representative signing the agreement. Do not include the name, only the title. The title shown for the sponsor’s representative should match the title shown on the signature page and should be preceded by “the” or “its”, as appropriate, to match the title of the sponsor’s representative. (Example: the Mayor)

**7. LOCATION OF PROJECT.** – Choose, Option (1) if the project in the agreement is located in Idaho; Option (2) if the project in the agreement is located in Montana; Option (3) if the project in the agreement is located in rural Nevada; Option (4) if the project in the agreement is located in New Mexico; Option (5) if the project in the agreement is located in rural Utah; or Option (6) if the project in the agreement is located in Wyoming. Delete, in their entirety, the options not used.

**8. PRE-AGREEMENT DESIGN WORK.** – Only design performed by the sponsor prior to the effective date of the agreement should be considered as pre-Agreement design work. The reasonable costs of pre-Agreement design work shall be included in total project costs which have not been included in any other agreement for the project. If the sponsor wants to include costs for pre-Agreement design work, then all language on pre-Agreement design work should be included in the agreement. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the sponsor is requesting costs for pre-Agreement design work be included in total project costs.

**9. DESCRIPTION OF THE PROJECT.** – The input required for the description of the project is described below.

A. Describe the project features to be undertaken pursuant to this agreement in detail sufficient to avoid any confusion over what is or is not included. If the project features to be undertaken pursuant to this agreement are an element of a countywide or statewide environmental infrastructure system, only the features to be undertaken in this agreement should be included in the description of the project. Reminder: Do not include any lands, easements, rights-of-way, (LER) or relocations requirements of the project in this description.

B. The title and date of the decision document that describes the project should be included (such as Scope of Work, Feasibility Report with Engineering Appendix, General

Reevaluation Report, etc.). Also include the title of the approving official (such as Assistant Secretary of the Army (Civil Works); Chief of Engineers; Commander, \_\_\_\_\_ Division; or Commander, \_\_\_\_\_ District) and the date of approval. The civilian format for any dates included in the agreement should be used. (Example: January 22, 2004)

C. For any projects where the proposed work is reconstruction, repair, or rehabilitation of existing environmental infrastructure features, the sponsor must verify in writing if it was constructed through any other Federal program and whether OMRR&R was required and that the proposed reconstruction, repair, or rehabilitation is not normal O&M activities required for the existing environmental infrastructure features. Performance of normal O&M activities should not be considered for implementation under this authority. The letter from the sponsor should be part of the PCA package. If the original construction of the environmental infrastructure feature was performed under a Federal program that required OMRR&R, you should consult with your MSC and your HQ RIT for guidance before proceeding any further.

10. **BETTERMENTS.** – A betterment is a difference in quality of an element of the project to be designed/constructed, not a difference in kind. (Example: install larger size or higher grade pipe than needed to meet Federal standards) The term “betterment” does not include any design or construction for features not included in the definition of the project as defined in the agreement.

#### 11. **LIMITATIONS ON REIMBURSEMENTS BY THE GOVERNMENT.**

A. Because the definition of total project costs expressly excludes any value of LER and relocations and permit costs in excess of 25 percent of total project costs, amounts to be reimbursed to the sponsor under these paragraphs will never include any value of LER and relocations or permit costs.

B. The amount of reimbursement provided pursuant to Article II.D. in any fiscal year is subject to the applicable limitations of Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103. The amount of reimbursement made under Article II.D. or VI.C.1. together with the credits or reimbursements proposed for all other applicable programs and projects cannot exceed the total limit indicated in each fiscal year. Each district should verify with your MSC and your HQ RIT to determine if you are impacted by this limitation.

#### 12. **ARTICLE II.E. - LIMITS ON FEDERAL PARTICIPATION.**

A. **CONGRESSIONAL ADD PARAGRAPH** – Article II.E.1. - The dollar amount to be included in the first blank should be the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement. The dollar amount to be included in the second blank should be that portion of available Section 595 Program funds for the applicable state that the district is projecting to be available for the project in this agreement, as of the effective date of the agreement. The

district, through the Project Coordination Team (Article V), shall work closely with each sponsor to plan execution of the project so that useful portions can be constructed as funds are made available. The sum of the amount of Federal funds made available for all the Section 595 agreements in the applicable state, including this one, plus the sum of Federal funds made available for overall management of the Section 595 Program allocated to the applicable state, cannot exceed the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement, nor can it exceed the current Section 595 Program Limit for the applicable state, unless Congress has authorized an increase in the limit in Act language.

**B. SECTION 595 PROGRAM LIMITS – Article II.E.3. -** The Government will not issue work allowances for projects undertaken in any state pursuant to the Section 595 Program beyond the amount authorized to be appropriated in Section 595 for that state, currently \$55,000,000 for Idaho, \$25,000,000 for Montana, \$150,000,000 for rural Nevada, \$25,000,000 for New Mexico, \$50,000,000 for rural Utah, and \$30,000,000 for Wyoming.

**C. SUSPENSION OF GOVERNMENT PERFORMANCE – Article XIII.B. and Article XIII.C. -** If the Government suspends its future performance responsibilities, including reimbursement, under the agreement pursuant to Article II.E.2. or Article XIV.C., the sponsor, at its sole discretion, may continue work on the project. However the sponsor should understand that if they continue to work on the project during the period of suspension of the Government's performance responsibilities, such work performed must comply with the conditions of Article II.C. of the agreement to be eligible for inclusion in total project costs and any reimbursement of the Federal share of such work once the Government has resumed its performance responsibilities. If the Section 102 Limit compels the Government to suspend reimbursement, but funds are otherwise available, the Government's performance of its other obligations will not be suspended.

**13. COMPLETED PORTION OF THE PROJECT. –** Because Section 595 authorizes the provision of design and construction assistance, the concept of functional portions of the project has been deleted. The district should use its best judgment to determine when construction of a portion of the project is complete so that the sponsor can commence its operation and maintenance responsibility.

**14. ARTICLE ILL. - ADDITIONAL WORK. -** The Government should not accept any requests for 1) acquisition of LER necessary for betterments, 2) performance of relocations necessary for betterments, or 3) obtaining permits necessary for the project.

**15. ADDITIONAL ITEMS OF COOPERATION. -** Include any additional paragraphs in the agreement necessary to reflect special requirements of non-Federal cooperation specified in the decision document upon which the agreement is based. Carefully review the items of non-Federal cooperation in the decision document to ensure that all items of cooperation are covered in the agreement. When including any additional items of cooperation in the agreement, name the responsible party then include the item of cooperation contained in the decision document. (Example: The Non-Federal Sponsor

shall ...) Including the additional items of non-Federal cooperation in the agreement is not considered a deviation from the model unless additional language is required elsewhere in the agreement to further address the added item of cooperation.

16. GUIDANCE ON APPRAISALS. - See Chapter 12 of ER 405-1-12 for guidance on applicable rules including use of Federal versus State rules in preparing an appraisal.

17. ARTICLE VI.A. – BREAKDOWN OF PROJECT COSTS.

A. The costs shown in Article VI.A.1. should be the current estimate of the costs at current price levels and inflated through the estimated mid-point of construction.

B. To determine the reimbursement of the Federal share due to the sponsor in accordance with IL.D.: Step (1) determine the Government's share of total project costs; Step (2) subtract from the Government's share of total project costs the amount of total project costs to be incurred by the Government; the difference is the reimbursement of the Federal share due to the sponsor that should be shown in the sixth blank in Article VI.A.1.

Example:

total project costs = \$2,000,000

total project costs to be incurred by the Government = \$75,000

total project costs to be incurred by the sponsor = \$1,925,000

Step 1 -  $(\$2,000,000 \times .75) = \$1,500,000$  - Government's share of total project costs

Step 2 -  $\$1,500,000 - \$75,000 = \$1,425,000$  - reimbursement due to sponsor

C. The blank in Article VI.A.2. should be filled in with the date (month, year) of the first quarterly report of costs to be provided to the sponsor.

18. ARTICLE VI.C. - FINAL ACCOUNTING.

A. When a final accounting cannot be conducted in a timely manner because of outstanding claims and appeals or eminent domain proceedings, an interim accounting should be conducted. The district should use its best judgment in determining whether to conduct an interim accounting or wait for final resolution of outstanding claims and appeals or eminent domain proceedings.

B. Nothing in the agreement, prevents any interim accountings from being conducted prior to the end of the period of design and construction.

19. TIMING OF FIRST REQUEST FOR SPONSOR'S FUNDS. – Insert the number of days (should be 60 or more). The last sentence of this paragraph states that the sponsor is required to provide the requested funds no later than 30 calendar days prior to the Government incurring any financial obligations for additional work. Therefore any number less than 60 will give the sponsor less than 30 days notice prior to when the funds must be provided to the Government.

20. LENGTH OF TIME TO PROVIDE ADDITIONAL FUNDS. – Insert the number of



days. The period of time should not exceed the time shown unless the District Engineer approves a longer period of time after determining that the longer period of time will not result in delays to the project (including contract modifications) or the Government using its funds to meet a shortfall in the sponsor's funds. The district must determine the need for additional funds from the sponsor far enough ahead of time to permit the sponsor full use of the specified period of time. Neither party's funds should be used to meet any shortfall in the other party's funds.

**21. INSPECTION OF COMPLETED WORKS.** – Due to the wide variety of potential projects to be undertaken in the future pursuant to this authority, the district may want to inspect some completed projects during the O&M phase. While this inspection is not mandatory, the decision to perform any inspection should be based on the specifics of the project. **Reminder: Article VIII.B. is not an optional paragraph. It must be included in all agreements regardless of the level of inspections proposed to be performed.**

**22. ARTICLE IX – HOLD AND SAVE.** - Include the optional language after the colon only if optional Article XIX - Obligations of Future Appropriations (see note 26) is included in the agreement and the sponsor requests this optional language be added to Article IX of the agreement. In addition, if this language is included, delete the "The". **Reminder: The entire article is not optional as only the phrase shown in the brackets is optional.**

**23. ARTICLE XIV - HAZARDOUS SUBSTANCES.** – In accordance with paragraph A. of this Article, the sponsor is to perform or ensure performance of investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on lands, easements, and rights-of-way necessary for the project. It is Army policy that the sponsor either perform these investigations in-house or contract for their performance with a third party. The Government should not perform these investigations on behalf of the sponsor. However, as stated in this article, the Government performs, or instructs the sponsor to perform investigations required on lands, easements, and rights-of-way that are subject to navigation servitude. For additional explanation, refer to ER 1165-2-132.

**24. ARTICLE XV - NOTICES.** – Insert the full address of the sponsor and Government - including titles or office title/symbol of individuals to receive the notices. Do not include the name of the individual to receive the notices as it may change throughout the life of the agreement.

**25. ARTICLE XVIII – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES.** – Article XVIII is optional and can be deleted if requested by the sponsor. If the article is deleted, renumber the remaining articles in the agreement and verify the references throughout the agreement to the remaining articles. In particular, if the article addressing Obligations of Future Appropriations is included in the agreement, and the sponsor requests the optional language in Article IX (see note 22) verify the reference contained in Article IX to the article addressing Obligations of Future Appropriations and correct, as necessary. Renumbering the remaining articles in the agreement and correction of all

references to the remaining articles are not considered a deviation from the model.

**26. ARTICLE XIX – OBLIGATIONS OF FUTURE APPROPRIATIONS.** - Include optional Article XIX in the agreement only if the sponsor requests this language and only after your District Counsel determines, in writing after review of information supporting the request from the sponsor, that the sponsor is a State agency or a political subdivision of the State that derives its funds for the project directly from appropriations and the sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in the first three blanks in Article XIX.A. should identify the body that makes the appropriations. (Example: Legislature of the State of Ohio or City Counsel of the City of Cleveland)

**27. ARTICLE XIX.A. - ADDITIONAL RESTRICTION ON OBLIGATIONS OF FUTURE APPROPRIATIONS.** - Include the optional language after the colon if requested by the sponsor. The information to be included in the blanks should provide more detailed information on the location of the obligation of future appropriations restriction. (Example: Section 7 of the City Charter of the City of Cleveland)

**28. SPONSOR’S BUDGET CYCLE.** - Choose Option (1) if the sponsor has a 1 year budget cycle or Option (2) if the sponsor has a 2 year budget cycle.

**29. ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY.** – Include optional Article XX only if the sponsor is a Native American Tribe. The information to be included in the first and third blanks should be the name of the instrument (resolution, ordinance, etc) where the sponsor has waived sovereign immunity. The information to be included in the fourth blank should be the title of the sponsor’s representative (see note 6).

**30. TITLE OF GOVERNMENT REPRESENTATIVE.** – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. If the signature authority is delegated to the district, the phrase “District Engineer” should be used in this location. If the signature authority is not delegated, the title shown should match the title of the Government representative shown in the first paragraph (see note 4).

**31. CERTIFICATE OF AUTHORITY.** - The person signing the Certificate of Authority cannot be the signatory to the agreement. The person signing the Certificate of Authority is certifying that the signatory to the agreement has the authority to obligate the sponsor. Do not forget to fill in the name in the first line prior to execution of the agreement.

**32. PREPARING AGREEMENT FOR SIGNATURE.**

A. When printing the agreement for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the agreement; 2) ensure that the appropriate information has been included in all blanks in the agreement and the Certificate of Authority; 3) ensure that titles of articles are not the last thing at the bottom of the page; and 4) ensure that there are no page breaks which allow half empty pages. Reminder: Do not remove any of the *italics* from the agreement.

B. If the signature authority has been delegated to the District Engineer: 1) the title of the Government representative in the first paragraph (see note 4) should be “U.S. Army Engineer, \_\_\_\_\_ District”; 2) the title of the Government representative in the last paragraph (see note 30) should be “District Engineer”; and 3) since this is a civilian document use the civilian version of the District Engineer’s signature block.

C. If the signature authority is not delegated, the title in the first paragraph (see note 4) and last paragraph should match the title of the Government representative shown in the signature block.

D. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement, not the sponsor.

E. The Government should retain two fully executed copies of the agreement. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC and the appropriate HQ RIT) of the fully executed agreement should be provided to the MSC and to the appropriate HQ RIT within 14 days after execution of the agreement.

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
[FULL NAME OF NON-FEDERAL SPONSOR]  
FOR  
DESIGN AND CONSTRUCTION  
ASSISTANCE  
FOR THE  
[FULL NAME OF PROJECT]

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the [SEE NOTE - 4] and [FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 5] (hereinafter the "Non-Federal Sponsor"), represented by [SEE NOTE - 6].

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

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

[SEE NOTE - 7]

**OPTION 1**

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

**OPTION 2**

WHEREAS, Section 595 provides that \$25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Montana pursuant to the Section 595 Program;

**OPTION 3**

WHEREAS, Section 595 provides that \$150,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Nevada pursuant to the Section 595 Program;

#### OPTION 4

WHEREAS, Section 595 provides that \$25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in New Mexico pursuant to the Section 595 Program;

#### OPTION 5

WHEREAS, Section 595 provides that \$50,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Utah pursuant to the Section 595 Program;

#### OPTION 6

WHEREAS, Section 595 provides that \$30,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Wyoming pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, \_\_\_\_\_ District (hereinafter the "District Engineer") has determined that [FULL NAME OF THE PROJECT] in [SPECIFIC LOCATION OF THE PROJECT, INCLUDING COUNTY & STATE] (hereinafter the "Project", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

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

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* [SEE NOTE – 8: including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary];

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable programs and projects in each fiscal year;

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

for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

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

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

#### ARTICLE I - DEFINITIONS

[SEE NOTE - 9]

A. The term "*Project*" shall mean \_\_\_\_\_ in \_\_\_\_\_ as generally described in the [FULL TITLE OF DECISION DOCUMENT], dated \_\_\_\_\_, \_\_\_\_ and approved by \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: [SEE NOTE - 8: the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the

Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

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

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

[SEE NOTE - 10]

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

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

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

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

[SEE NOTE - 7]

#### **OPTION 1**

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

#### **OPTION 2**

J. The term “*Section 595 Program Limit for Montana*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Montana pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$25,000,000.

#### **OPTION 3**

J. The term “*Section 595 Program Limit for rural Nevada*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Nevada pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$150,000,000.

#### **OPTION 4**

J. The term “*Section 595 Program Limit for New Mexico*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in New Mexico pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$25,000,000.

#### **OPTION 5**

J. The term “*Section 595 Program Limit for rural Utah*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Utah pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$50,000,000.

#### **OPTION 6**



J. The term “*Section 595 Program Limit for Wyoming*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Wyoming pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$30,000,000.

K. The term “*Section 102 Limit*” shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

[SEE NOTE - 8]

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

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

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

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

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter “NEPA”). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

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

policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

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

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

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

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

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

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

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

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

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

[SEE NOTE - 11]

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho*. (2) *Section 595 Program Limit for Montana*. (3) *Section 595 Program Limit for rural Nevada*. (4) *Section 595 Program Limit for New Mexico*. (5) *Section 595 Program Limit for rural Utah*. (6) *Section 595 Program Limit for Wyoming*.]

[SEE NOTE - 12]

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

1. As of the effective date of this Agreement, \$ \_\_\_\_\_ of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] of which \$ \_\_\_\_\_ is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

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

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] has reached the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho*, (2) *Section 595 Program Limit for Montana*, (3) *Section 595 Program Limit for rural Nevada*, (4) *Section 595 Program Limit for New Mexico*, (5) *Section 595 Program Limit for rural Utah*, (6) *Section 595 Program Limit for Wyoming*.] and the Government projects that the Federal funds the Government will make available to the *Project* within the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho* (2) *Section 595 Program Limit for Montana* (3) *Section 595 Program Limit for rural Nevada* (4) *Section 595 Program Limit for New Mexico* (5) *Section 595 Program Limit for rural Utah* (6) *Section 595 Program Limit for Wyoming*] will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the

Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho*, (2) *Section 595 Program Limit for Montana*, (3) *Section 595 Program Limit for rural Nevada*, (4) *Section 595 Program Limit for New Mexico*, (5) *Section 595 Program Limit for rural Utah*, (6) *Section 595 Program Limit for Wyoming*,] the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

[SEE NOTE - 13]

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

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

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of

such legal and institutional structures.

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

[SEE NOTE - 14]

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

[SEE NOTE - 8]

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

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

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

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

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

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

[SEE NOTE - 15]

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS,  
AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be

necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits



pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. [SEE NOTE - 16] The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal

Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness,

allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) Nevada (4) New Mexico (5) Utah (6) Wyoming] would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of

the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

#### ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

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

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for

*relocations* and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

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

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

## ARTICLE VI - METHOD OF PAYMENT

[SEE NOTE - 17]

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement [SEE NOTE - 8: , and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement].

1. As of the effective date of this Agreement, *total project costs* are projected to be \$ \_\_\_\_\_; the Government's share of *total project costs* is projected to be \$ \_\_\_\_\_; the Non-Federal Sponsor's share of *total project costs* is projected to be \$ \_\_\_\_\_; *total project costs* to be incurred by the Government are projected to be \$ \_\_\_\_\_; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$ \_\_\_\_\_; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$ \_\_\_\_\_; the value included

in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be \$ \_\_\_\_\_; [SEE NOTE - 8: the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be \$ \_\_\_\_\_;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$ \_\_\_\_\_; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$ \_\_\_\_\_; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be \$ \_\_\_\_\_. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By \_\_\_\_\_ and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; [SEE NOTE - 8: the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

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

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

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of

*total project costs* and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the “payment amount”) if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho* (2) *Section 595 Program Limit for Montana* (3) *Section 595 Program Limit for rural Nevada* (4) *Section 595 Program Limit for New Mexico* (5) *Section 595 Program Limit for rural Utah* (6) *Section 595 Program Limit for Wyoming*] or the *Section 102 Limit*.

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

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor’s account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

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

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

[SEE NOTE - 18]

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such

interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho* (2) *Section 595 Program Limit for Montana* (3) *Section 595 Program Limit for rural Nevada* (4) *Section 595 Program Limit for New Mexico* (5) *Section 595 Program Limit for rural Utah* (6) *Section 595 Program Limit for Wyoming*] and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than [SEE NOTE - 19] calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable



to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within [SEE NOTE – 20 - NOT TO EXCEED 30] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-

Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

[SEE NOTE - 21]

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

#### ARTICLE IX – HOLD AND SAVE

[SEE NOTE - 22: Subject to the provisions of Article XIX of this Agreement, the] The

Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and

regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

## ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

**[SEE NOTE – 12]**

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to

failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

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

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

[SEE NOTE – 23]

#### ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer

provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE NOTE - 24]

If to the Non-Federal Sponsor:

If to the Government:

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this ,

paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.



D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho. (2) Montana. (3) rural Nevada. (4) New Mexico. (5) rural Utah. (6) Wyoming.] None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

[SEE NOTE – 25]

#### ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

[SEE NOTE – 26]

#### ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ [SEE NOTE - 27: , where creating such an obligation would be inconsistent with \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_].

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that [SEE NOTE - 28 - CHOOSE: (1) year, (2) biennium,] and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the

Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[SEE NOTE - 29]

ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY

By \_\_\_\_\_ dated \_\_\_\_\_, the Non-Federal Sponsor waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such \_\_\_\_\_ authorized [SEE NOTE - 6] \_\_\_\_\_ to include such waiver as part of this Agreement. Accordingly, the Non-Federal Sponsor hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; (2) recover damages for any breach of the terms and conditions of this Agreement; and (3) seek indemnification or contribution based on the Non-Federal Sponsor's obligations under Article IX of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the [SEE NOTE - 30].

DEPARTMENT OF THE ARMY

(FULL NAME OF NON-FEDERAL SPONSOR)

BY:           [SIGNATURE]            
      [TYPED NAME]  
      [TITLE IN FULL]

BY:           (SIGNATURE)            
      (TYPED NAME)  
      (TITLE IN FULL)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

[SEE NOTE - 31]

CERTIFICATE OF AUTHORITY

I, Jason Guinasso, do hereby certify that I am the principal legal officer of the **Incline Village General Improvement District**, that the **Incline Village General Improvement District** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **Incline Village General Improvement District** in connection with the **Effluent Export Line Pond Lining Project**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the **Incline Village General Improvement District** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
**Jason D. Guinasso. Esq.**  
District Designated Lawyer

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**Kendra Wong, Chairwoman  
IVGID Board of Trustees**

DATE: \_\_\_\_\_

September 30, 2019

Laura Whitney  
Program and Project Manager  
U.S. Army Corps of Engineers  
1325 J Street, 9th Floor  
Sacramento, California 95814-2922

RE: IVGID Effluent Storage Basin Improvements Project Scope of Work

### **BACKGROUND**

The Incline Village General Improvement District (IVGID or District) operates a wastewater collection, treatment, and effluent export system that serves the communities of Incline Village and Crystal Bay, NV and the Nevada State Parks (Sand Harbor, Spooner and Memorial Point) located at Lake Tahoe. A critical component of this operation is the 2.4 million gallon effluent storage basin located adjacent to the wastewater resource recovery facility (Plant). This storage basin was designed to provide automated and passive back-up effluent storage in the event the Plant's 500,000 gallon effluent storage tank fills to capacity. By lining the storage basin, it will allow for effluent storage during emergency situations and planned effluent pipeline repair and replacement construction projects. The lining will also eliminate the need to retreat this effluent through the Plant, speeding recovery from the incident. Depending on the time of year and associated influent flows at the Plant, this final effluent storage basin can provide between 1.6 and 3.2 days of storage. The effluent storage basin also ensures there is adequate storage capacity to accommodate a multiple day power outage that interrupts Plant operations.

As a condition of the District's current operating permit with the Nevada Department of Environmental Protection (NDEP), the District is no longer allowed to utilize the effluent storage basin for storage because it is unlined. This significantly hampers the District's ability to conduct planned maintenance of the effluent export system and puts the District at risk of a discharge of effluent to the waters of Lake Tahoe in the event of a significant emergency.

### **EFFLUENT STORAGE IMPROVEMENTS PROJECT**

Analysis conducted as a component of the District's Effluent Export Project Predesign Report July 2004 indicates that, due to the regulatory limitations associated with the use of the Effluent Storage Basin, there is insufficient operational storage available to the District to provide adequate redundancy and reliability of the effluent export system.

The following improvements are proposed to be completed to allow routine use of the Effluent Storage Basin:

- 1) Clear, grub, and re-grade the Effluent Storage Basin.
- 2) Construct improvements to allow impervious containment of effluent within the Effluent Storage Basin.

- 3) Install fencing around the basin periphery for security and safety.
- 4) Construct mechanical improvements to allow Effluent Storage Basin to be operated in conjunction with the Effluent Storage Reservoir.
- 5) Replace and automate existing piping, pumping system, and controls to allow unattended operation of the Effluent Storage Basin.

### **ENVIRONMENTAL ASSESSMENT**

An Environmental Assessment is anticipated to be required for this project. The USACE will be the lead agency and oversee all field work and document composition with assistance from the District staff. The District expects to hire a consultant to complete the environmental assessment work for review by the USACE.

As a reference, the District completed an Environmental Assessment to allow previous effluent export system improvements. The Environmental Assessment was completed in October 2004 with a Finding of No Significant Impact, issued by the USACE. The area of impact for the recommended improvements to the Effluent Storage Basin is contained within the Environmental Assessment's Project Area and studied as a component of the project analysis. The document is now considered out of date and can't be used for findings.

### **PROJECT WORK TO DATE**

The following work has been completed to allow implementation of the Effluent Storage Basin improvements:

- Expansion of the access road around the wastewater treatment plant to improve ingress/egress to allow construction of improvements to the Effluent Storage Basin. This work included the purchase of an adjacent parcel.
- A contract with a consulting engineer to complete pre-design analysis that evaluates alternatives, makes recommendations, completes preliminary design, and develops construction cost estimates to implement the above listed effluent storage recommendations.

### **PROPOSED PROJECT SCHEDULE**

- Complete pre-design technical memorandum – September 2018
- Final design and environmental entitlement – November 2019 - April 2020
- Project bidding and contract award – June 2020
- Project construction – June 2020 - October 2020

**PROPOSED PROJECT BUDGET**

<b>Project Component</b>	<b>Estimated Cost</b>
Site Civil	\$200,000
Reservoir Improvements	\$1,200,000
Piping, Mechanical, & Controls	\$275,000
Subtotal	\$1,675,000
Contingency (20% of Subtotal)	\$335,000
<b>Construction Estimate</b>	<b>\$2,010,000</b>
Pre-Design	\$50,000
Final Design	\$250,000
Environmental Documentation	\$75,000
Construction Administration & Management	\$200,000
IVGID Project Administration & Management	\$125,000
<b>Estimated Project Total</b>	<b>\$2,710,000</b>
USACE Share (75%)	\$2,032,500
IVGID Share (25%)	\$677,500

**ESTIMATED FISCAL YEAR(FY) BUDGET**

<b>FY 2019</b>	<b>Estimated Cost</b>
Final Design	\$200,000
Environmental Documentation	\$75,000
IVGID Project Administration & Management	35,000
Subtotal	\$310,000
<b>FY 2020</b>	<b>Estimated Cost</b>
Final Design and Bidding	\$100,000
Construction	\$2,010,000
Construction Administration & Management	200,000
IVGID Project Administration & Management	90,000
Subtotal	\$2,400,000
<b>Total</b>	<b>\$2,710,000</b>



**PROJECT LOCAL SHARE**

IVGID presently has sufficient funds in Utility Fund Balance to provide the necessary funding for design, permitting and construction phase costs.

Very sincerely yours,

A handwritten signature in blue ink that reads "Joseph J. Pomroy".

Joseph J. Pomroy, P. E.  
Director of Public Works



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<b>Subject</b>	<b>Water Resource Reclamation Facility (WRRF) Effluent Storage Alternative Analysis (Final Draft)</b>
<b>Attention</b>	Incline Village General Improvement District (IVGID)
<b>From</b>	Jacobs Engineering: Ashley Kellogg and Brett Isbell
<b>Date</b>	September 28, 2018

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Incline Village General Improvement District (IVGID) currently operates and maintains an existing earthen basin at its water resource recovery facility (WRRF) to temporarily store WRRF effluent for brief durations. The existing basin has a storage capacity of approximately 2 million gallons (MG) and is unlined. IVGID is evaluating lining the basin to essentially eliminate effluent infiltration and resulting percolation and to further protect natural and environmental resources. This technical memorandum (TM) presents a WRRF effluent management alternative analysis, including conceptual basin lining layouts and planning level implementation costs.

Attachment 1 includes conceptual sketches of effluent storage alternatives.

Attachment 2 includes planning-level construction cost estimates.

### **1. Existing Effluent Storage**

The effluent basin was constructed approximately 50 years ago and includes a jurisdictional embankment. The existing basin is located on the south side of the WRRF site and encompasses a surface area of approximately 1.2 acres. An overflow structure is present on the southeast side of the site (note that there has never been an emergency overflow from the basin). Additionally, IVGID utilizes the east corner of the basin as a spoil decant facility. Existing side slopes within the basin are approximately 3H:1V.

Effluent is diverted to the basin infrequently (approximately 5 days per calendar year) for planned maintenance activities that require effluent diversions or in the unlikely event of an emergency diversion, such as a severe biological upset of the treatment process. Effluent is conveyed out of the basin to either the export pipeline (gravity flow) or is pumped back to the WRRF treatment process.

In addition to the basin described above, IVGID also utilizes a 0.5-MG steel tank for primary effluent storage. The existing steel tank is 74 feet in diameter and approximately 17 feet tall with a bottom elevation of 6465.20 feet.

### **2. Effluent Storage Alternative Analysis**

The alternative analysis presented below is comprised of effluent storage management criteria, alternative development, initial alternative screening, and results.

## 2.1 Effluent Storage Management Criteria

Following are effluent storage criteria:

- Effluent storage capacity must be a minimum of 1.25 MG with a target storage volume of 1.50 MG.
- The jurisdictional embankment must remain as-is.
- Effluent must flow by gravity (i.e., without additional pumping) from the WRRF into the basin or storage facility. Effluent must be plumbed to both the existing pumping station (to pump effluent back to the WRRF headworks) or be conveyed to the export pipeline.
- Effluent storage improvements and basin lining must be compatible with the existing decant facility and access into the basin must be preserved for occasional spoils removal.
- Basin lining shall be in accordance with Nevada Division of Environmental Protection (NDEP) requirements.

## 2.2 Alternative Development

Effluent storage alternatives were developed based on the criteria presented above and are described below. The alternatives considered were lining the existing basin using high-density polyethylene (HDPE) or concrete, a concrete basin with vertical walls, construction of a single enclosed tank, and construction of multiple enclosed tanks.

### 2.2.1 HDPE Lining

An HDPE liner is often used for basin lining applications. NDEP guidelines would require a geomembrane liner with a minimum thickness of 60-mil HDPE and a maximum allowable leakage rate of 500 gallons per acre/day. Due to the function of the basin, a double-lined leak detection system may also be required with a secondary liner thickness of 40-mil HDPE and a leak detection and collection system. Installation must be performed by a qualified contractor with credentials and experience including geomembrane liner deployment, welding, testing, and patching. Proper subgrade preparation including grading and compaction is essential for HDPE liners and the perimeter must be secured using anchor trenches.

A reinforced concrete access roadway or ramp would need to be provided at the northeast corner of the basin for access to the spoil decant facility. The spoil decant facility would be concrete lined as well with a vertical separation between the effluent storage and the spoil decant. HDPE would be secured to the perimeter of the concrete access roadway and the facility separation.

Prior to installation of the HDPE lining, minor grading of the existing basin would be required to re-establish 3H:1V side slopes and a flat basin bottom. Subgrade preparation would be anticipated as well.

HDPE lining is commonly used and has a lower initial installation cost. However, HDPE liners have a shorter useful life compared to other liners and are more easily punctured and prone to leaks, which typically requires additional maintenance cost compared to other alternatives. Perimeter fencing around the open basin may also be required for wildlife protection.

### 2.2.2 Concrete Lining

Reinforced concrete lining of the basin would reduce the amount of construction coordination between the effluent basin and spoil decant facility. As with HDPE lining, a vertical separation of the two facilities would be installed, but the use of the same lining material for both would be easier to construct and would eliminate the possibility of leakage at the connection.

Reinforced concrete with a thickness of 8 inches is anticipated for vehicle access areas, including the bottom of the basin and access roadway or ramp. Side slopes would be 6 inches thick. In general, concrete has a higher leakage rate than geomembrane due to cracks. Cracks and leakage can be reduced with concrete design and additional joints for control. Joint sealant would be necessary at all the construction joints to help prevent leakage.

As with the HDPE lining alternative, minor grading of the existing basin would be required as well as subgrade preparation prior to placing the reinforced concrete lining and an underdrain system for potential leakage.

Construction of reinforced lining may be longer duration than HDPE lining due to the formwork required and curing time of the concrete. However, concrete lining is more durable than HDPE with less maintenance required throughout the anticipated liner lifetime. This open basin alternative may also require perimeter fencing.

### **2.2.3 Concrete/Shotcrete Combination**

Alternative 3 is a variation of Alternative 2. Reinforced concrete with a thickness of 8 inches would be placed in vehicle access areas in the bottom of the pond and access ramp. In lieu of reinforced concrete on the side slopes, shotcrete lining would be used. The shotcrete would be fiber-reinforced with a thickness of 4 inches on the side slopes with an interface to the concrete at the basin bottom.

The construction duration and effort should be less than full reinforced concrete lining, but leakage concerns would be similar. Additional joints in the reinforced concrete basin bottom could help control cracks. Shotcrete is more prone to cracking than reinforced concrete, but due to the frequency and duration that the basin will be at capacity, this may be a non-issue.

Similar grading and subgrade preparation of the basin prior to concrete placement would be required as in Alternative 1 and 2. Joint sealant and perimeter fencing requirements would be similar as well.

### **2.2.4 Concrete Basin with Vertical Walls**

As an alternative to concrete lining the side slopes, the bottom of the basin could be graded, and a monolithic concrete basin with vertical walls constructed. To achieve the desired storage capacity, the basin walls would need to be approximately 10 feet tall with the pond side slopes graded to match at the top of wall. The spoil decant location would be left as-is, outside of the monolithic basin. This option would be the least cost effective due to the reinforcement requirements of a monolithic basin and the earthwork required to provide capacity.

### **2.2.5 Single Enclosed Tank**

IVGID currently utilizes an enclosed steel tank for primary effluent storage onsite. The emergency storage could be achieved with a similar enclosed tank constructed at the existing basin location.

Prior to placing a single enclosed tank, excavation of the existing basin would be required to provide the area necessary to accommodate a tank with the desired capacity. To match hydraulic grade lines with the existing facility, the tank would be placed with a bottom elevation of 6465.0 feet, which is 3 to 5 feet lower than the existing basin bottom. The side slopes would be revised to 2H:1V to increase the area of the basin bottom and provide enough space for access around the tank and within the spoils decant facility.

The anticipated tank size for a single enclosed tank with 1.5 MG capacity would be 100 feet in diameter and 25 feet tall. Access to the tank, basin bottom, and spoil decant facility would be provided at the northeast corner of the basin.

All existing tanks maintained by IVGID are steel construction. The existing effluent tank onsite is welded steel, so this option would mimic a familiar material and maintenance option. Based on size requirements,

a reinforced or prestressed circular concrete tank can also be considered. A steel tank option would require similar maintenance as the other tanks maintained by IVGID and perimeter fencing may not be required.

**2.2.6 Multiple Enclosed Tanks**

Conceptual layout was developed for three 0.5-MG storage tanks (1.5 MG total new storage volume) effectively within the existing basin; however, this configuration would require extensive grading of the existing basin and the side slopes to be increased to 1.5H:1V. Steel and concrete tanks could be considered. By initial screening and evaluating various tank configurations, including layouts with partially buried tanks to reduce earthwork and side slope regrading, it was concluded that this alternative is cost prohibitive.

**2.3 Initial Alternative Screening**

A summary of alternative development is presented below.

Alternative	Result
1. HDPE Lining	Include in Alternative Analysis
2. Concrete Lining	Include in Alternative Analysis
3. Concrete/Shotcrete Combination	Include in Alternative Analysis
4. Concrete Basin with Vertical Walls	Cost prohibitive
5. Single Enclosed Tank	Include in Alternative Analysis
6. Multiple Enclosed Tanks	Cost prohibitive

**2.4 Alternative Analysis Results**

After initial screening, Alternatives 1, 2, 3, and 5 were further reviewed for planning-level construction cost and additional considerations as noted in the table below.

Alternative	Planning-Level Construction Cost	Considerations
1. HDPE Lining	\$500,000	<p>HDPE is widely used for basin lining applications and likely requires the lowest initial capital investment.</p> <p>HDPE lining has a shorter lifespan and is considered less durable than other alternatives.</p> <p>HDPE lining can be easily damaged or punctured by wildlife.</p> <p>Interface with decant facility and access roadway may create weak points of potential seepage and additional maintenance and repair.</p>
2. Reinforced Concrete Lining	\$1,100,000	<p>Concrete lining has a longer lifespan than HDPE but is also more expensive and has a higher leakage rate.</p> <p>Construction time may be longer due to placement of forms and reinforcement, as well as concrete curing time.</p> <p>Cracks can be controlled with concrete design and joint placement and sealant.</p> <p>Interface with decant facility will be easier to construct and maintain with all one material.</p>
3. Concrete/Shotcrete Combination	\$900,000	<p>Lower initial capital cost for the application of shotcrete on the side slopes compared to reinforced concrete.</p> <p>Shotcrete is more prone to cracking and leakage than reinforced concrete but will have limited contact with effluent.</p>



Alternative	Planning-Level Construction Cost	Considerations
		Anticipated construction time for the side slopes will be less without the need for forms and multiple pours.
4. Single Enclosed Tank	\$3,200,000	Tanks are enclosed and, therefore, allow for greater detention durations before conveying effluent to the export pipeline as opposed to requiring pumping and retreatment through the WRRF. Extensive earthwork is required to provide room for the single tank within the basin footprint, including an increase of the side slopes to 2H:1V. IVGID is familiar with the maintenance and function of an enclosed tank for effluent storage.

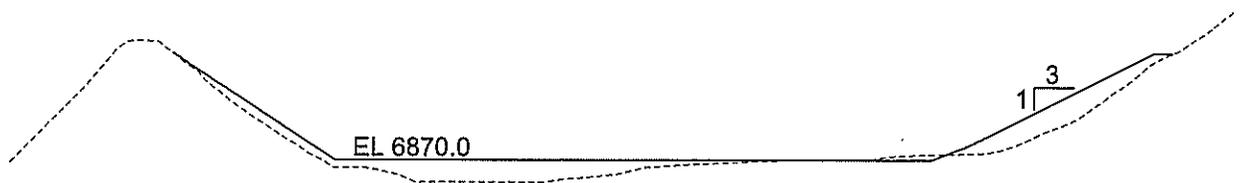
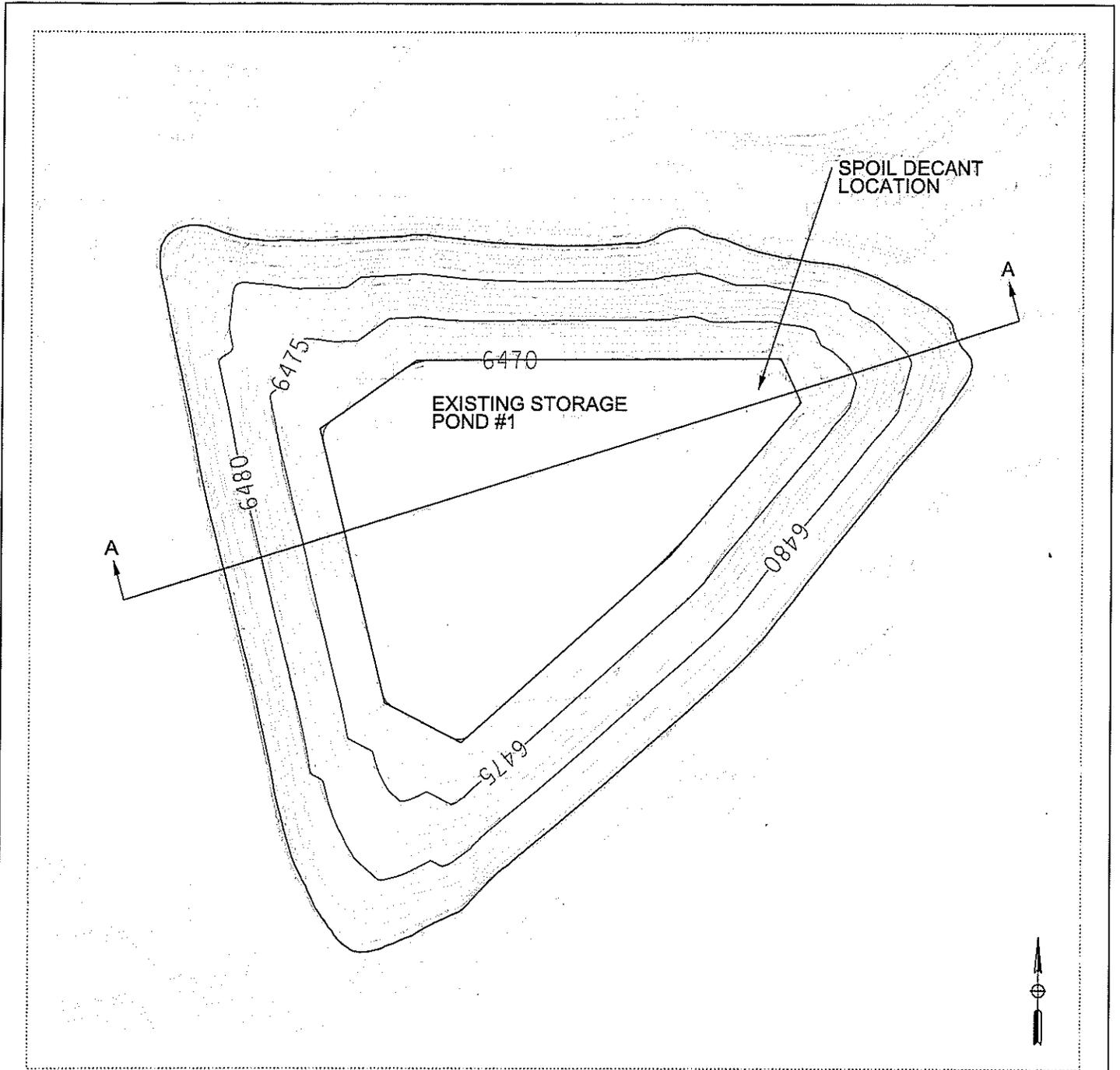
### 3. Summary

HDPE geomembrane liner (Alternative 1) requires the lowest initial capital investment, but this is likely offset by greater maintenance requirements and costs, and a shorter lifespan. The interface and separation of the concrete spoil decant facility complicates the design and increases potential maintenance concerns.

The reinforced concrete lining and the combination of concrete and shotcrete lining (Alternative 2 and 3) both require a greater initial capital investment and longer construction time than the HDPE liner (Alternative 1) but have a longer lifespan and will require less maintenance. The shotcrete lining of the side slopes will require less construction effort without the need for form work prior to placement that is required for reinforced concrete side slopes. For either alternative, the spoil decant facility would be constructed of the same material at the same time as the remainder of the lining. It would be easiest with Alternative 2 or 3 to accommodate and maintain the spoil decant facility compared to the other alternatives.

The single enclosed tank (Alternative 5) would provide the greatest flexibility on storage duration and the management and maintenance of such facility are familiar to IVGID staff, but the initial capital investment is higher and basin excavation is required to accommodate the facility. Construction duration and design effort would be less than that of the basin lining alternatives.

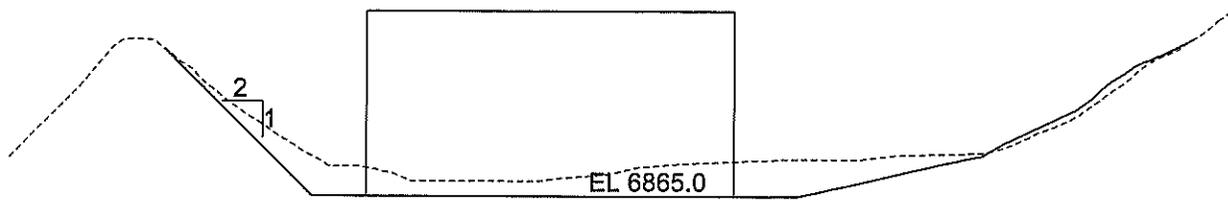
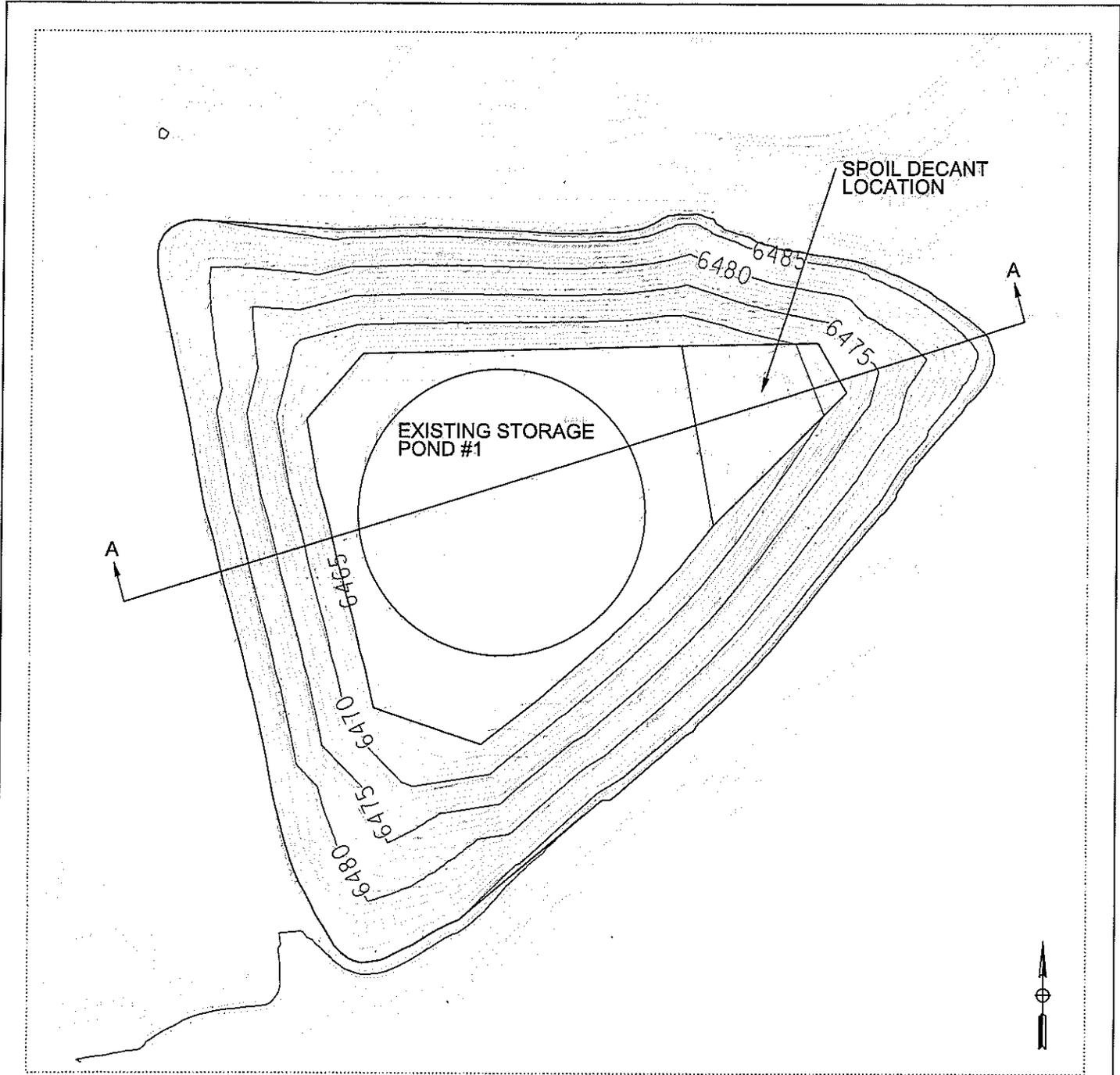
**Attachment 1**  
**Alternative Figures**



SECTION A-A

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
 WRRF EFFLUENT STORAGE - BASIN LINING (ALTERNATIVE 1, 2 AND 3)  
 INCLINE VILLAGE, NEVADA





SECTION A-A

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
 WRRF EFFLUENT STORAGE - SINGLE ENCLOSED TANK (ALTERNATIVE 5)  
 INCLINE VILLAGE, NEVADA

**Attachment 2**  
**Construction Cost Estimates**

# Summary Report

Project type:  
Job Size:  
Duration:

Project Name: IVGID Effluent Storage Feasibility Study Pond Liner HDPE Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalleri/RDD  
Rev/Date: 0 / Aug 29, 2018  
Estimate Class: 4

Proj Name	Description	Takeoff Quantity	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
01	Pond Lining: HDPE Lining	47,000.00 SF	5.19 /SF	243,902	9.81 /SF	461,006

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	190,814		1,647.315 hrs	
Material	212,886			
Subcontract				
Equipment	57,306		1,619.661 hrs	
Other				
<b>Total Construction Costs</b>	<b>461,006</b>	<b>461,006</b>		



## Detail Report

Project type:  
Job Size:  
Duration:

Project Name: VGD Effluent Storage Feasibility Study Pond Liner HDPE Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalleri/RDD  
RevDate: 0 / Aug 29, 2018  
Estimate Class: 4

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	102,984		1,647.315 hrs	
Material	109,990			
Subcontract				
Equipment	30,928		1,619.661 hrs	
Other				
Subtotal Direct Cost	243,902	243,902		
Material Sales Tax	9,091			8.265 %
Subtotal W/ Sales Tax	9,091	252,993		
General Conditions	17,710			7.000 %
Subtotal W/ General Conditions	17,710	270,703		
Mobilization/Demobilization	21,656			8.000 %
Prime Contractor Overhead	35,083			12.000 %
Prime Contractor Profit	19,647			6.000 %
Bonds and Insurances	7,532			2.170 %
Subtotal W/ Prime Markups	83,918	354,621		
Contingency	106,386			30.000 %
Subtotal W/ Contingency	196,386	461,007		
<b>Total Construction Costs</b>		<b>461,007</b>		

# Summary Report

Project type:  
Job Size:  
Duration:

Project Name: IVGID Effluent Storage Feasibility Study Pond Liner Concrete Bottom and Slopes Rev 0 Estimator: Nick Cavalleri/RDD  
Project Number: 703748 Rev/Date: 0 / Sept 12, 2018  
Design Stage: Estimate Class: 4

Proj Name	Description	Takeoff Quantity	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
05	Pond Lining: Reinforced Concrete Bottom and Slopes	47,000.00 SF	11.38 /SF	535,043	21.69 /SF	1,019,611

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	372,605		2,837.579 hrs	
Material	575,901			
Subcontract				
Equipment	71,105		778.878 hrs	
Other				
<b>Total Construction Costs</b>	<b>1,019,611</b>	<b>1,019,611</b>		

# Detail Report

Project type:  
Job Size:  
Duration:

Project Name: MGD Effluent Storage Feasibility Study Pond Liner Concrete Bottom and Slopes Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalieri/RDD  
Rev/Date: 0 / Sept 12, 2018  
Estimate Class: 4

Proj Name	Work Pkg	Trade Pkg	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Sub Cost/Unit	Equip Cost/Unit	Other Cost/Unit	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
05	31.0		<b>Pond Lining: Reinforced Concrete Bottom and Slopes</b>										
			<b>Earthwork</b>										
			Excavate, bulk, open site, bank measure, common earth, 105 HP, dozer, 150' haul	14.00 mcf	275.38 /mcf			183.95 /mcf		459.33 /mcf	6,431	854.29 /mcf	11,960
			Load Excavated Material	1,000.00 cy	0.94 /cy			1.23 /cy		2.17 /cy	5,948	9.29 /cy	9,396
			Line Bedding, Fill, dumped material, spread, by dozer, excludes compaction	1,000.00 cy	0.94 /cy			1.23 /cy		2.17 /cy	2,171	4.04 /cy	4,538
			Haul Off, excavated or borrow material, loose cubic yards, 20 mile round trip, 0.5 loads/hour, 20 C.Y. dump trailer, highway haulers, excludes loading	1,000.00 cy	8.11 /cy		35.00 /cy	8.00 /cy		39.58 /cy	39,558	76.47 /cy	76,496
			Compaction, wetter for, 3000 gallon truck, 5 mts haul	1,000.00 cy	0.71 /cy	1.19 /cy		0.56 /cy		2.45 /cy	2,454	4.66 /cy	4,662
			Compaction, structural, common fill, 8" lifts, sheepsfoot or wobbly wheel roller	1,000.00 cy	0.58 /cy			1.81 /cy		1.59 /cy	1,593	2.86 /cy	2,962
			Underdrain System and Washdown Allowance	1.00 ls	25,000.00 /ls	51,000.00 /ls		8,500.00 /ls		85,000.00 /ls	85,000	162,303.58 /ls	162,304
			Reinforcing Steel, #3, place, slab on grade, #3 to #7, A615, grade 60, incl labor for accessories, excl material for accessories	30.20 ton	1,125.36 /ton	1,200.00 /ton				2,325.36 /ton	70,226	4,424.03 /ton	133,506
			Concrete, ready mix, regular weight, slabs/mats, 3500 psi	510.00 cy	28.96 /cy	125.00 /cy		5.91 /cy		135.87 /cy	69,750	242.81 /cy	124,564
			Structural concrete, placing, slab on grade, pumped, over 6" thick, includes strike off & consolidation, excludes material	497.00 cy	27.83 /cy			4.86 /cy		32.69 /cy	16,244	59.79 /cy	30,211
			Class fill for seed matn across first and class 1,2,3 and 4, active a cross over the fill&Nln val 135/25, but fill, mchm fill&Nln tw (wk-bh), excl sion, sikh	20,000.00 sf	0.81 /sf			0.02 /sf		0.83 /sf	16,648	1.55 /sf	20,962
			Curing, sprayed membrane curing compound	200.00 csf	8.81 /csf	12.10 /csf				20.91 /csf	4,182	29.88 /csf	7,879
			Forming, Edge and Construction Joints	1.00 ls	6,278.88 /ls	1,500.00 /ls		1,000.00 /ls		8,778.88 /ls	8,779	16,451.50 /ls	16,452
			Fine grading, fine grade for slab on grade, machine	2,222.22 sq	0.53 /sq			0.62 /sq		1.15 /sq	3,435	2.88 /sq	6,389
			31.0 Earthwork	47,000.00 SF	4.26 /SF	6.31 /SF		0.81 /SF		11.38 /SF	535,043	1,019,611.73 /SF	1,019,611

## Detail Report

Project type:  
Job Size:  
Duration:

Project Name: NGD Effluent Storage Feasibility Study Pond Liner Concrete Bottom and Slopes Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalieri/RDD  
Rev/Date: 0 / Sept 12, 2018  
Estimate Class: 4

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	200,340		2,837.579 hrs	
Material	296,472			
Subcontract				
Equipment	38,231		778.878 hrs	
Other				
Subtotal Direct Cost	535,043	535,043		
Material Sales Tax	24,503			8.265 %
Subtotal W/ Sales Tax	24,503	559,546		
General Conditions	39,168			7.000 %
Subtotal W/ General Conditions	39,168	598,714		
Mobilization/Demobilization	47,897			8.000 %
Prime Contractor Overhead	77,593			12.000 %
Prime Contractor Profit	43,452			6.000 %
Bonds and Insurances	16,658			2.170 %
Subtotal W/ Prime Markups	185,600	784,314		
Contingency	235,295			30.000 %
Subtotal W/ Contingency	235,295	1,019,609		
<b>Total Construction Costs</b>		<b>1,019,609</b>		



# Summary Report

Project type:  
Job Size:  
Duration:

Project Name: IVGID Effluent Storage Feasibility Study Pond Liner Concrete Bottom Shotcrete Slopes REstimator: Nick Cavalleri/RDD  
Project Number: 703748  
Design Stage:

Rev/Date: 0 / Sept 12, 2018  
Estimate Class: 4

Proj Name	Description	Takeoff Quantity	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
05	Pond Lining: Reinforced Concrete Bottom Shotcrete Slopes	47,000.00 SF	9.49 /SF	446,030	18.21 /SF	855,650

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	234,099		1,626.273 hrs	
Material	554,842			
Subcontract				
Equipment	66,709		820.350 hrs	
Other				
<b>Total Construction Costs</b>	<b>855,650</b>	<b>855,650</b>		

# Detail Report

Project type:  
Job Size:  
Duration:

Project Name: NGD Effluent Storage Feasibility Study Pond Liner Concrete Bottom Shotcrete Slopes Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalieri/RDD  
Rev/Date: 0 / Sept 12, 2018  
Estimate Class: 4

Proj Name	Work Pkg	Trade Pkg	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Sub Cost/Unit	Equip Cost/Unit	Other Cost/Unit	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
05	31.0		<b>Pond Lining: Reinforced Concrete Bottom Shotcrete Slopes</b>										
			<b>Earthwork</b>										
			Existing Pond Re-Grading										
			Excavating, bulk, dozer, open site, bank measure, common earth, 195 H.P. dozer, 150' haul	14.00	275.38			183.95		459.33	6,431	856.93	11,987
			Load Excavated Material	1,000.00	2.80			2.55		5.35	5,946	9.41	9,415
			Liner Bedding, Fill, dumped material, spread, by dozer, excludes compaction	1,000.00	0.94			1.23		2.17	2,171	4.05	4,050
			Haul Off, excavated or borrow material, loose cubic yards, 20 mile round trip, 0.5 loads/hour, 20 C.Y. dump trailer, highway haulers, excludes loading	1,000.00	6.11	35.00		2.55		39.56	39,558	76.69	76,692
			Compaction, water for, 3000 gallon truck, 6 mile haul	1,000.00	0.71	1.19		0.66		2.45	2,454	4.68	4,677
			Compaction, structural, common fill, 8" lifts, sheepsfoot or wobby wheel roller	1,000.00	0.58			1.01		1.59	1,593	2.97	2,971
			Underdrain System and Washdowns Allowance	1.00	25,500.00	\$1,000.00		8,500.00		85,000.00	85,000	162,791.92	162,791
			Shotcrete, wet mix, fiber reinforced, 3000 psi, 4" thick	27,000.00	0.34	3.47		0.06		3.87	104,578	7.51	202,843
			Reinforcing Steel, in place, slab on grade, #3 to #7, A615, grade 60, incl labor for accessories, excl material for accessories	30.29	1,125.36	1,200.00				2,325.36	70,226	4,437.27	134,009
			Concrete, ready mix, regular weight, slab/curbs, 3500 psi	510.00	38.96			5.91		44.87	22,816	83.70	2,528
			Structural concrete, placing, slab on grade, rumped, over 6" thick, includes strike off & consolidation, excludes material	497.00	19.25	125.00				125.00	63,750	243.53	124,201
			Clearing for spot from access fire access 1, 2, 3 and 4, active a comp over the finished val 125/25, but the main 118x117	20,000.00	0.91			5.04		24.90	19,974	45.32	22,506
			Formwork, edge and construction joints	1.00	6,278.88	1,500.00		1,000.00		8,778.88	8,779	16,501.82	16,502
			31.0 Earthwork	1.00	125,482.02	284,790.60		35,757.63		446,029.65	446,030	855,556.16	855,556
			<b>05 Pond Lining: Reinforced Concrete Bottom Shotcrete Slopes</b>	<b>47,000.00</b>	<b>2.67</b>	<b>6.06</b>		<b>0.76</b>		<b>9.49</b>	<b>446,030</b>	<b>18.21</b>	<b>855,650</b>

## Detail Report

Project type:  
Job Size:  
Duration:

Project Name: N/GD Effluent Storage Feasibility Study Pond Liner Concrete Bottom Shotcrete Slopes Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalleri/RDD  
Rev/Date: 0 / Sept 12, 2018  
Estimate Class: 4

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	125,482		1,626.273 hrs	
Material	284,790			
Subcontract				
Equipment	35,758		820.350 hrs	
Other				
Subtotal Direct Cost	446,030	446,030		
Material Sales Tax	23,538			8.265 %
Subtotal W/ Sales Tax	23,538	469,568		
General Conditions	32,870			7.000 %
Subtotal W/ General Conditions	32,870	502,438		
Mobilization/Demobilization	40,195			8.000 %
Prime Contractor Overhead	65,116			12.000 %
Prime Contractor Profit	36,465			6.000 %
Bonds and Insurances	13,979			2.170 %
Subtotal W/ Prime Markups	155,755	658,193		
Contingency	197,458			30.000 %
Subtotal W/ Contingency	197,458	855,651		
<b>Total Construction Costs</b>		<b>855,651</b>		

# Summary Report

Project type:  
Job Size:  
Duration:

Project Name: IVGID Effluent Storage Feasibility Study Steel Tank Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalleri/RDD  
Rev/Date: 0 / Aug 29, 2018  
Estimate Class: 4

Proj Name	Description	Takeoff Quantity	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
03	Storage Tank: Steel Tank	1.50 MG	1,992,759.33 /MG	2,989,139	2,082,803.35 /MG	3,124,205

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	123,938		1,089.030 hrs	
Material	106,727			
Subcontract				
Equipment	58,540		418.508 hrs	
Subtotal W/ Contingency	289,205	289,205		
Tank Costs	2,835,000			
<b>Total Construction Costs</b>		<b>3,124,205</b>		



## Detail Report

Project type:  
Job Size:  
Duration:

Project Name: IVGID Effluent Storage Feasibility Study Steel Tank Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalieri/RDD  
Rev/Date: 0 / Aug 29, 2018  
Estimate Class: 4

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	67,117		1,089.030 hrs	
Material	55,320			
Subcontract				
Equipment	<u>31,701</u>		418.508 hrs	
Subtotal Direct Cost	154,138	154,138		
Material Sales Tax	<u>4,572</u>			8.265 %
Subtotal W/ Sales Tax	4,572	158,710		
General Conditions	<u>11,110</u>			7.000 %
Subtotal W/ General Conditions	11,110	169,820		
Mobilization/Demobilization	13,586			8.000 %
Prime Contractor Overhead	22,009			12.000 %
Prime Contractor Profit	12,325			6.000 %
Bonds and Insurances	<u>4,725</u>			2.170 %
Subtotal W/ Prime Markups	52,645	222,465		
Contingency	<u>66,740</u>			30.000 %
Subtotal W/ Contingency	66,740	289,205		
Tank Costs	<u>2,835,000</u>			
Subtotal W/ Tank Costs	2,835,000	3,124,205		
<b>Total Construction Costs</b>		<b>3,124,205</b>		

# Summary Report

Project type:  
Job Size:  
Duration:

Project Name: IVGID Effluent Storage Feasibility Study Pre-Stressed Concrete Tank Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalleri/RDD  
Rev/Date: 0 / Aug 29, 2018  
Estimate Class: 4

Proj Name	Description	Takeoff Quantity	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
04	Storage Tank: Pre-Stressed Concrete Tank	1.50 MG	944,797.85 /MG	1,417,197	2,192,093.31 /MG	3,288,140

## Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	1,057,854		643.304 hrs	
Material	1,653,324			
Subcontract				
Equipment	576,962		500.225 hrs	
Other				
<b>Total Construction Costs</b>	<b>3,288,140</b>	<b>3,288,140</b>		

## Detail Report

Project type:  
Job Size:  
Duration:

Project Name: NGD Effluent Storage Feasibility Study Pre-Stressed Concrete Tank Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalieri/RDD  
RevDate: 0 / Aug 29, 2018  
Estimate Class: 4

Proj Name	Work Pkg	Trade Pkg	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Equip Cost/Unit	Total Cost/Unit	Direct Total	Grand Total Unit Price	Grand Total with Markups
04	31.0		<b>Storage Tank: Pre-Stressed Concrete Tank</b>								
			<b>Earthwork</b>								
			Excavate, site								
			Site Excavation and Grading								
			Existing Pond Re-Grading	14.00	275.38		183.95	459.33	6,431	940.20	13,163
			Excavating, bulk, dozer, open site, bank measure, common earth, 105 H.P. dozer, 150' haul	4,000.00	2.89		2.25	5.05	20,185	10,318	41,318
			Fill, dumped material, spread, by dozer, excludes compaction	4,000.00	0.76		1.27	2.03	8,110	4,115	26,495
			Compaction, water for, 3000 gallon truck, 6 mile haul	4,000.00	0.71	1.19	0.56	2.45	9,816	5,12	16,601
			Compaction, structural, common fill, 8' lifts, sheepfoot or wobby wheel roller	4,000.00	0.58		1.01	1.59	6,371	3,26	13,041
			Earthworks, Structural	4,000.00	5.82	1.10	2.24	9.16	36,415	18,73	114,638
			Site Excavation and Grading	1.00	13,500.00	4,200.00	22,249.89	40,049.89	1,070.19	134,638.09	134,638
			Earthworks, Structural	0.33	20,817.56	14,624.34	67,541.15	102,983.05	2,870.12	117,853.17	117,853
			Excavating, for tank foundation, common earth, 1 C.Y. excavator, excludes sheeting or dewatering	940.00	3.03		2.22	5.41	5,082	11.07	10,492
			Earthworks, Structural, Excavation	940.00	3.03		2.22	5.41	5,082	11.07	10,492
			Fill, imported structural fill, 120 H.P., 2-1/2 C.Y. spread fill, with front-end loader, excludes compaction	470.00	2.52	25.00	1.51	29.02	13,639	61.47	28,890
			Earthworks, Structural, Backfill	8,835.00	0.55	0.80	0.02	1.38	12,141	2.88	25,434
			Compaction, riding, vibrating roller, 3 passes, 12' lifts	660.00	0.11	0.80	0.19	1.10	723	32.21	54,854
			Compaction, water for, 3000 gallon truck, 6 mile haul	660.00	0.22		0.17	0.38	251	0.78	514
			Earthworks, Structural, Compaction	660.00	0.71	1.19	0.56	2.45	1,620	5.12	3,380
			Load Excess for Haul off	940.00	0.79		1.02	1.81	1,701	3.70	3,481
			Hauling, excavated or borrow material, loose cubic yards, 20 mile round trip, 0.5 loads/hour, 20 C.Y. dump trailer, highway haulers, excludes loading	940.00	6.11		8.00	14.11	13,266	28.89	27,153
			Earthworks, Structural, Hauling and Dump Fees	940.00	6.11		8.00	14.11	13,266	28.89	27,153
			Structural Excavation and Backfill	3,200.00	0.21	0.10	0.12	0.43	1,348	32.39	316.36
			Earthworks, Structural	3,200.00	0.21	0.10	0.12	0.43	1,348	32.39	316.36
			<b>31.0 Earthwork</b>	1.00	39,254.81	24,355.40	35,001.57	98,611.78	98,612	203,861.17	203,861
			<b>Tank Construction</b>								
			1,500,000 Gallons	1.00	360,000.00	520,000.00	220,000.00	1,100,000.00	1,100,000	2,569,565.22	2,569,565
			Aboveground Water Utility Storage Tanks, prestress concrete, 1,500,000 gallons, excl pipes or pumps	25,610.00	1.50	3.50	0.00	5.00	133,050	11,777	313,300
			Interior Tank Coatings Allowance	17,107.00	1.50	3.50	0.00	5.00	85,535	11,777	201,414
			Exterior Tank Coatings Allowance	1,500,000.00	0.28	0.45	0.11	0.84	1,318,585	2,06	3,084,279
			1,500,000 Gallons	1,500,000.00	0.28	0.45	0.11	0.84	1,318,585	2,06	3,084,279
			1,500,000 Gallons	1,500,000.00	0.28	0.45	0.11	0.84	1,318,585	2,06	3,084,279
			<b>33.9 Tank Construction</b>	1,500,000.00	0.28	0.45	0.11	0.84	1,318,585	2,06	3,084,279
			<b>04 Storage Tank: Pre-Stressed Concrete Tank</b>	1.50	309,886.87	464,909.93	170,001.05	944,797.85	1,417,197	2,192,093.31	3,288,140



## Detail Report

Project type:  
Job Size:  
Duration:

Project Name: IUGD Effluent Storage Feasibility Study Pre-Stressed Concrete Tank Rev 0  
Project Number: 703748  
Design Stage:

Estimator: Nick Cavalleri/RDD  
Rev/Date: 0 / Aug 29, 2018  
Estimate Class: 4

### Estimate Totals

Description	Amount	Totals	Hours	Rate
Labor	464,830		643.304 hrs	
Material	697,365			
Subcontract				
Equipment	255,002		500.225 hrs	
Other				
Subtotal Direct Cost	1,417,197	1,417,197		
Stressed Concrete Tank Subcontractor OH&P	329,646			25.000 %
Subtotal W/ Subcontractor OH&P	329,646	1,746,843		
Material Sales Tax	57,637			8.265 %
Subtotal W/ Sales Tax	57,637	1,804,480		
General Conditions	126,314			7.000 %
Subtotal W/ General Conditions	126,314	1,930,794		
Mobilization/Demobilization	154,464			8.000 %
Prime Contractor Overhead	250,231			12.000 %
Prime Contractor Profit	140,129			6.000 %
Bonds and Insurances	53,721			2.170 %
Subtotal W/ Prime Markups	598,545	2,529,339		
Contingency	758,802			30.000 %
Subtotal W/ Contingency	758,802	3,288,141		
<b>Total Construction Costs</b>		<b>3,288,141</b>		

## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Steven J. Pinkerton  
General Manager

**FROM:** Joseph J. Pomroy, P.E.  
Director of Public Works

Charley Miller, P.E.  
Engineering Manager

**SUBJECT:** Review, Discuss, and Authorize Chair and Legal Counsel to sign the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Export Phase II Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

**STRATEGIC PLAN:** Long Range Principle 5 – Assets and Infrastructure

**DATE:** February 15, 2019

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### **I. RECOMMENDATION**

That the Board of Trustees moves to authorize Chair and Legal Counsel to execute the Certificate of Authority and Certification Regarding Lobbying and submit them with the Effluent Export Phase II Project Scope of Work to the United States Army Corps of Engineers as part of the application process for Design and Construction Assistance under the Water Resources Development Act of 1999, Section 595.

### **II. DISTRICT STRATEGIC PLAN**

Long Range Principle #5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.

- Complete condition analysis and project scoping for the Effluent Export Project – Phase II and continue to pursue project partnerships and federal funding to reduce District costs.

### III. BACKGROUND

Incline Village General Improvement District (IVGID) currently owns, operates and maintains 21-mile pipeline that exports treated wastewater out of the Lake Tahoe Basin. The Effluent Export system also includes the un-lined pond and 500,000 gallon steel reservoir at the Water Resource Recovery Facility, the Spooner Effluent Pumping Stations and numerous valves, fittings and appurtenances located along the pipeline.

The Effluent Export Phase II Project will replace all of the remaining Segment 3 pipeline (17,300 linear feet) and portions or all of Segment 2 pipeline (13,700 linear feet) pending results of final condition assessment and design. Segment 3 experienced significant leaks in 2009 and 2014 of this bell and spigot pipe. Subsequent investigations confirmed progressive corrosion, which determined that wholesale replacement was required. Segment 2 is undergoing additional condition assessment efforts, as it was constructed of more robust welded steel and has not had a history of failures. This analysis is focused on identifying segments with extended life remaining and segments that need to be addressed in near term. Final design will dictate whether Segment 2 work will be of limited scope or complete replacement. The full scope of work and predesign cost estimates are included as attachments to this memo.

The District now has the opportunity to submit this project to the United States Army Corps of Engineers (USACE) for a Design and Construction Assistance Agreement under Section 595 of the Water Resources Development Act 1999 and its amendments.

The District has had a long positive working relationship with the USACE in funding and constructing infrastructure and environmental improvement projects since 2002. The District has received \$15.5 million dollars through the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016) Section 595 Program for the Effluent Export Project. The WIIN Act was formerly called the Water Resources Development Act. The District has also received \$6 million from the Lake Tahoe Restoration Act Section 108 Program for funding Environmental Restoration Projects that was matched with \$2 million of State of Nevada Funding for Mill, Incline and Third Creeks Restoration Projects.

The District and the District's Legislative Advocate, worked with the Nevada Delegation and other western states on raising the authorization of the Section 595 Program of the Water Infrastructure Improvements for the Nation Act (WIIN Act 2016). Nevada will be collaborating on Rural Section 595 with five other states, New Mexico, Montana, Wyoming, Idaho and Utah, who already have projects which qualify under Section 595. The new Section 595 Program increased the authorization limit by \$100 million over the previous limit to allow new annual appropriations through the Federal Budget process.

New language was inserted into Section 595 that clarifies that funding caps do not apply to individual States and that unspent monies can be re-allocated to priority projects in any state. This was an extremely important piece of language to have added because the US Army Corps was not open to discussing a new Project Partnership Agreement because they had interpreted that Nevada had spent their allocation of funds under Section 595.

In 2017, Staff and Marcus Faust worked with the US Army Corps staff in Sacramento and US Army Corps staff in Washington on bulletins describing this new language change. This provided the opportunity for the District to pursue a new Project Partnership Agreement with the USACE.

## **V. FINANCIAL IMPACT AND BUDGET**

The Effluent Export Line – Phase II Project is included in the District's Capital Improvement Budget. The current scope of work identifies the most current cost project budget for the Effluent Project Phase II Improvements. The Design and Construction Assistance Agreement provides up to 75% reimbursement of qualifying expenses as specified in the agreement. At this time it is unknown the level of reimbursement that the USACE would be able to provide.

## **VI. ALTERNATIVES**

None proposed.

## **VII. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.



**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
ENGINEERING DIVISION TECHNICAL MEMORANDUM**

**TO:** LAURA WHITNEY/USACE SACRAMENTO DISTRICT  
**FROM:** JOSEPH J. POMROY, P.E./IVGID  
**SUBJECT:** IVGID EFFLUENT EXPORT PIPELINE PROJECT PHASE II SCOPE OF WORK  
**DATE:** FEBRUARY 15, 2019

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**BACKGROUND**

The Incline Village General Improvement District (IVGID) first partnered with the US Army Corps of Engineers (USACE) in April 2003 under the Section 595 Program of the Water Resources Development Act, now WIINS, Water Infrastructure Improvements for the Nation, to tackle this extraordinary project to rehabilitate a 21-mile pipeline that exports treated wastewater out of the Lake Tahoe Basin. IVGID is a small public utility that provides water and wastewater service for a year round population of about 10,000 residents in the communities of Incline Village and Crystal Bay on the north shore of Lake Tahoe. In 1970, this 21 mile pipeline was installed as part of the regional effort to protect Lake Tahoe's water quality by requiring all wastewater effluent to be exported out of the basin.

The original pipe, now almost 50 years old, is reaching the end of its useful life and ongoing corrosion has caused failure at multiple locations. Early phases of this project investigated the whole pipeline and prioritized the replacement schedule to maintain this critical infrastructure. Within the Tahoe Basin this pipe was divided into three segments. Segment 1 is the low pressure supply pipe to the pump station near Sand Harbor. Segment 2 is the welded steel high pressure discharge pipe exiting the pump station. Segment 3 is the remaining low pressure jointed steel transmission pipeline within the Tahoe Basin running south to Spooner Summit.

Phase 1 work completed has replaced all four miles of Segment 1 pipe within NDOT right-of-way as well as two miles of Segment 3 pipeline that crosses through State Park lands at Spooner Lake. Another critical component of these projects was the elimination of two small wastewater treatment plants located at Sand Harbor and Memorial Point State Parks which are located next to Lake Tahoe. The wastewater is now pumped directly to IVGID for treatment at the regional plant. IVGID's original Spooner Pumping station was also completely renovated with improved emergency pumping capacity.

Overall, IVGID has been diligently pursuing the replacement of the effluent export pipeline since 2003 in the Lake Tahoe Basin. Total capital expenditures to date have been \$22.8 million over the last 16 years to replace the aging effluent export system. IVGID has received \$15.4 million in funding from the WRDA Section 595 program through a Project Cooperation Agreement with the United State Army Corps of Engineers.

The District has now placed in its new 10 year capital improvement plan an additional \$23 million in expenditures to replace the remaining six miles of effluent pipeline in the Lake Tahoe Basin. The capital plan has been approved by the IVGID Board of Trustees. The IVGID Board of Trustees has also already approved four consecutive years of 10% sewer rate increases (2011, 2012, 2013 and 2014), a 45% total increase to sewer rates, to accumulate the funds for this critical infrastructure replacement. The District is now collecting from our rate payers an additional \$2 million per year to fund this project.

### **EFFLUENT STORAGE IMPROVEMENTS PROJECT**

#### **Effluent Export Pipeline Phase II Replacement – 2019-2023**

The project represents an onerous and unusual infrastructure requirement for a small utility district. This challenge is also unique to the Lake Tahoe basin in that the pipeline replacement helps assure the protection of a national environmental resource. In 2011, IVGID began engineering design for the complete replacement of the remaining six miles of Phase II export pipeline within the Lake Tahoe basin. Preliminary cost estimates are at \$23 million (in 2021 Dollars) for the work in this narrow mountainous highway corridor. The predesign cost estimate is provided as an attachment.

Phase II will replace all of the remaining Segment 3 pipeline (17,300 linear feet) and portions or all of Segment 2 pipeline (13,700 linear feet) pending results of final condition assessment and design. Segment 3 experienced significant leaks in 2009 and 2014 and subsequent investigations confirmed progressive corrosion of this bell and spigot pipe with wholesale replacement required. Segment 2 is undergoing additional condition assessment efforts as it was constructed of more robust welded steel and has not had a history of failures. Final design will dictate whether Segment 2 work will be of limited scope or complete replacement.

Phase II work will be completed over multiple years in a manner similar to Phase I of the Effluent Export Pipeline Project. Like Phase 1, pipe in State Route 28 be replaced using open-cut construction moving the pipeline to the center of the Southbound travel lane. However alternatives now include co-locating with the planned Stateline-to-Stateline bikeway slated to parallel State Route 28 and potentially avoid the complications of working in the State Highway.

IVGID is a partner with the Tahoe Transportation District (TTD) in the Lake Tahoe SR 28 Corridor Management Plan that will construct portions of the Stateline-to-Stateline bikeway on the Nevada side of Lake Tahoe near the existing pipeline. TTD and IVGID completed a preliminary engineering investigation that determined it feasible to co-locate the effluent pipeline with the Bike Path in a new alignment adjacent to the SR 28 corridor from near Sand Harbor to Spooner Junction. IVGID joined the TTD in a cost sharing agreement to complete the Environment Assessment of both alignment alternatives of the pipeline replacement. Should the Bike Path project proceed, there exists a unique partnership to deliver an outstanding recreational opportunity along with replacing the pipeline in a cost effective and expeditious manner. There are numerous advantages for operating and maintaining the pipeline under a bike path as opposed to under the busy SR-28 corridor.

Project conditions dictate that IVGID's pipeline work be completed as a multi-year project. Similarly the proposed bikeway nearby will be phased over multiple seasons and may be subject to additional unique constraints.

### CONCEPTUAL PROJECT MILESTONES

- **2019 Evaluation:** Engineering review of 2018 Condition assessment data and near term design of repairs, if needed.
- **2019-20 Repairs:** Construct any repairs identified from 2018 Condition assessment evaluation.
- **2019-20 Phase II Final Design:** Design for the remaining thin-wall Segment 3 pipeline replacement – 13,700 lf and identified Segment 2 pipeline - up to 17,300 lf
- **2020-2026 Tahoe Basin Pipeline Replacement:** The replacement in phases of up to 31,000 feet of pipeline in highway. Short construction windows require 4 to 6 years to complete.

### PREDESIGN COST ESTIMATE

See attachment.

**CONCEPTUAL PROJECT BUDGET**

**Attached is the HDR May 30, 2012 - Estimate of Probably Construction Cost for the 16 inch Effluent Pipeline. This estimate assumes a 2021 construction start date with 4% escalation.**

**ESTIMATED FISCAL YEAR (FY) BUDGET**

<b>FY 2020</b>	<b>Estimated Cost</b>
IVGID Administrative Costs	\$256,100
Design	\$1,280,800
<b>Subtotal</b>	<b>\$1,536,900</b>
<b>FY 2021</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>FY 2022</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>FY 2023</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>FY 2023</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>Total</b>	<b>\$23,053,300</b>

**\*numbers are rounded**

**PROJECT LOCAL SHARE**

IVGID presently has sufficient funds in Utility Fund Reserves to provide the necessary project local share.



Computation					
<b>Project</b>	IVGID Export Pipeline Project, Phase II			<b>Computed</b>	HDR
<b>Subject</b>	Estimate of Probable Construction Cost - 16 inch Effluent Pipeline			<b>Date</b>	5/30/2012
<b>Task</b>	PreDesign Cost Estimate - Single Bid			<b>Reviewed</b>	IVGID
<b>Start</b>	2021 construction start with assumed 4% escalation			<b>Date</b>	6/4/2012
	QUANTITY	UNITS	UNIT PRICE	TOTAL COST	
<b>DIVISION 1 - GENERAL REQUIREMENTS</b>					
Mobilization and Demobilization (10%)	1	LS	\$1,311,829	\$1,311,829	
Insurance and Bonds (3%)	1	LS	\$393,549	\$393,549	
<b>SUBTOTAL</b>				<b>\$1,705,377</b>	
<b>DIVISION 2 - SITE WORK</b>					
Mitigation and Environmental Controls	1	LS	\$250,000	\$250,000	
Asphalt Cutting	59,400	LF	\$3.95	\$234,499	
Repping - Trench Section	178,200	SF	\$5.26	\$937,996	
Asphalt Overlay (1 inch open-graded) and Rotomill	356,400	SF	\$1.32	\$468,998	
Asphalt Stripping	59,400	LF	\$0.99	\$58,625	
Excavation (Soil)	21,945	CY	\$32.90	\$721,953	
Excavation (Rocks)	1,155	CY	\$789.56	\$911,941	
Hauling and Disposal (Soil and Rocks)	14,135	CY	\$23.69	\$334,813	
Shoring	29,700	LF	\$10.53	\$312,665	
Backfill and Compaction (Intermediate)	8,965	CY	\$59.22	\$530,880	
Backfill and Compaction (Initial Backfill)	4,619	CY	\$59.22	\$273,498	
Bedding Material	1,100	CY	\$59.22	\$65,139	
Aggregate Base	3,300	CY	\$59.22	\$195,416	
Grout Existing Effluent Pipeline	1,816	CY	\$296.08	\$537,817	
Traffic Control	1	LS	\$200,000.00	\$200,000	
Blow off Valves (Installation and Miscell.)	5	EACH	\$986.95	\$4,935	
AVRV manholes	11	EACH	\$3,947.80	\$43,426	
<b>SUBTOTAL</b>				<b>\$6,082,599</b>	
<b>DIVISION 3 - CONCRETE</b>					
Concrete Pipe Cover	1,650	CY	\$263.19	\$434,257	
<b>SUBTOTAL</b>				<b>\$434,257</b>	
<b>DIVISION 15 - MECHANICAL</b>					
<b>PIPES</b>					
8 inch DI (Blowoff)	75	LF	\$105.27	\$7,896	
2 inch HDPE pipe	176	LF	\$6.58	\$1,158	
16-inch DIP Pipe	29,700	LF	\$210.55	\$6,253,308	
<b>FITTINGS</b>					
DIP Fittings (Assume 3% of Pipe Cost)	1	LS	\$188,000	\$188,000	
<b>VALVES</b>					
2 inch AVRV	11	EACH	\$2,631.86	\$28,950	
2 inch Gate Valve	11	EACH	\$197.39	\$2,171	
8 inch Gate Valve (Blowoff)	5	EACH	\$1,315.93	\$6,580	
16 inch Butterfly Valves	2	EACH	\$5,263.73	\$10,527	
Valve Boxes (Blowoff)	10	EACH	\$657.97	\$6,580	
Valve Extension Rod and Casing (Blowoff)	5	EACH	\$986.95	\$4,935	
Tie-in	2	EACH	\$6,579.66	\$13,159	
Pipeline Pressure Testing	29,700	LF	\$2.65	\$78,166	
<b>SUBTOTAL</b>				<b>\$6,601,430</b>	
<b>Subtotal 1 (Division Total)</b>				<b>\$14,823,664</b>	
Contractor Overhead and Profit (8% of Subtotal 1)				\$1,185,893	
<b>Subtotal 2</b>				<b>\$16,009,557</b>	
Construction Contingencies (20% of Subtotal 2)				\$3,201,911	
Design (8% of Subtotal 2)				\$1,280,765	
Administrative Costs (8% of Subtotal 2)				\$1,280,765	
Construction Management (8% of Subtotal 2)				\$1,280,765	
<b>Subtotal 3</b>				<b>\$23,053,763</b>	
<b>TOTAL ESTIMATED PROJECT COST</b>				<b>\$23,053,763</b>	

SECTION 595 – WRDA 1999, AS AMENDED

ENVIRONMENTAL INFRASTRUCTURE

IDAHO, MONTANA, RURAL NEVADA, NEW MEXICO, RURAL UTAH, AND  
WYOMING

MODEL AGREEMENT  
FOR  
DESIGN AND CONSTRUCTION  
ASSISTANCE

(WORK PERFORMED BY NON-FEDERAL SPONSOR)

OCTOBER 25, 2005  
REVISED - NOVEMBER 19, 2005  
REVISED - JULY 15, 2009

**APPLICABILITY.** – The attached model agreement is one of six models for the provision of environmental assistance to non-Federal interests in Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (Section 595) projects. The following descriptions of the six models are provided to assist in determining the correct model to be used for your project. None of the models discussed below should be used for the provision of environmental infrastructure assistance pursuant to any other authority. Models for the provision of environmental infrastructure assistance pursuant to other authorities can be found in the approved model section of the PCA Web page. If there is no approved model posted in the approved model section of the PCA Web page that is applicable to your particular environmental infrastructure authorization, the District Project Delivery Team should consult with the appropriate HQ RIT for guidance on drafting the appropriate agreement.

*Section 595 Non-Federal Design and Construction* – The attached model should be used for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.

*Section 595 Non-Federal Design* – Use only for Section 595 projects when the

sponsor requests design for the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

*Section 595 Non-Federal Construction* – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and the sponsor will be performing the work on the project. The Federal share will be provided in the form of reimbursement. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

*Section 595 Federal Design* – Use only for Section 595 projects when the sponsor requests design for the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design. Since this agreement is limited to design, compliance with all applicable environmental laws and regulations is not required prior to approval and execution of the agreement.

*Section 595 Federal Construction* – Use only for Section 595 projects when the sponsor requests construction of the project be undertaken in the agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the construction. An agreement using this model may not be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

*Section 595 Federal Design and Construction* – Use only for Section 595 projects when the sponsor requests both design and construction of the project be undertaken in one agreement and requests the Government to perform the work on the project. Optional language is included in the model addressing if the sponsor wants to perform some of the design or construction. An agreement using this model may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-7370e) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and must be completed prior to initiation of construction.

NOTES. – The following pages (iv – xi) contain numbered notes to assist in drafting an agreement for your project using this model. Throughout the model agreement, there are references to the numbered notes (example: [SEE NOTE – 7]) to direct you to the appropriate note that provides explanation and guidance on use of optional language or

information required to fill in the blanks. Several of the notes are general in nature and should be reviewed and discussed with the sponsor during preparation of the draft agreement for your project.

**OPTIONAL LANGUAGE.** – The use of optional language allows the model to be applicable to a larger universe of projects. Many of the numbered notes (example: [SEE NOTE – 8]) require you to choose between multiple versions of language or to choose whether or not to include a paragraph, sentence, or phrase depending on the specifics of your project. In many cases optional language to address a concept, such as the sponsor performing non-Federal design and construction work, is required in numerous locations throughout the agreement. Each of these locations has been identified with numbered notes; however, it is important to ensure that, if the optional language addressing a certain concept is included in one location, it is also included in all other appropriate locations. Correct use of the optional language is not considered a deviation from the model.

**BLANKS.** – There are numerous locations where information specific to your project is required to fill in a blank. All of the blanks must be filled in, except the date in the first paragraph, prior to forwarding the agreement for review. Including the information required to fill in a blank is not considered a deviation from the model.

**DEFINED TERMS SHOWN IN ITALICS.** – Throughout the agreement the terms defined in Article I are shown in italics. Do not remove any of the *italics* from the agreement.

**NOTES:**

**1. FORMAT.** - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the agreement prior to forwarding for review. Reminder: Do not remove any of the *italics* from the agreement.

**2. SECTION 595 TERMINOLOGY.** - The Section 595 program envisions a wide array of different types of projects, some of which do not fit the typical definition of construction. As a result, the terms “construction” and “construct” used throughout the agreement, may not be appropriate for all types of projects. Therefore, substitution throughout the agreement as appropriate, of “implementation” and “implement” for projects consisting of non-structural type activities or “construction and implementation” and “construct and implement” for projects that are a combination of typical construction and non-structural type activities is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

**3. MULTIPLE SPONSORS.** - In the event there are two or more entities serving as the sponsors for the project, and there is no division of responsibilities between or among them, the agreement can be modified to identify all the entities collectively as the “Non-Federal Sponsors”. However, it should be explained to all entities that the term “Non-Federal Sponsors” is construed to hold multiple sponsors jointly and severally responsible for compliance with all agreement obligations. The changes outlined below are required to identify all entities collectively as “Non-Federal Sponsors” and are not considered a deviation from the model.

**A.** Modify title to include name of each entity serving as a sponsor.

**B.** Modify first paragraph to include name of each entity serving as a sponsor. (Example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the “Non-Federal Sponsors”))

**C.** Change “Non-Federal Sponsor” to “Non-Federal Sponsors” throughout the agreement. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase “Non-Federal Sponsors” to reflect multiple sponsors (i.e. “its” to “their” or “assumes” to “assume”, etc.).

**D.** On the signature page, a separate signature block will be required for each entity serving as a sponsor.

**E.** A separate Certificate of Authority will be required for each entity serving as a sponsor.

**F.** A Certification Regarding Lobbying must be signed by each signatory to the agreement.

**4. GOVERNMENT REPRESENTATIVE.** – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. (Example: U.S. Army Engineer, Mobile District)

**5. REFERENCE TO NON-FEDERAL SPONSOR.** - Use “Non-Federal Sponsor”, “Local Sponsor”, “State”, “County”, “Commonwealth”, “Territory” or other identifier as preferred by the sponsor in the parenthetical phrase and consistently throughout the agreement. This change is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

**6. NON-FEDERAL SPONSOR REPRESENTATIVE.** – Insert the title of the sponsor’s representative signing the agreement. Do not include the name, only the title. The title shown for the sponsor’s representative should match the title shown on the signature page and should be preceded by “the” or “its”, as appropriate, to match the title of the sponsor’s representative. (Example: the Mayor)

**7. LOCATION OF PROJECT.** – Choose, Option (1) if the project in the agreement is located in Idaho; Option (2) if the project in the agreement is located in Montana; Option (3) if the project in the agreement is located in rural Nevada; Option (4) if the project in the agreement is located in New Mexico; Option (5) if the project in the agreement is located in rural Utah; or Option (6) if the project in the agreement is located in Wyoming. Delete, in their entirety, the options not used.

**8. PRE-AGREEMENT DESIGN WORK.** – Only design performed by the sponsor prior to the effective date of the agreement should be considered as pre-Agreement design work. The reasonable costs of pre-Agreement design work shall be included in total project costs which have not been included in any other agreement for the project. If the sponsor wants to include costs for pre-Agreement design work, then all language on pre-Agreement design work should be included in the agreement. For each location where optional language or an optional paragraph(s) is provided, include the optional language after the colon or the entire paragraph(s), as applicable, only if the sponsor is requesting costs for pre-Agreement design work be included in total project costs.

**9. DESCRIPTION OF THE PROJECT.** – The input required for the description of the project is described below.

A. Describe the project features to be undertaken pursuant to this agreement in detail sufficient to avoid any confusion over what is or is not included. If the project features to be undertaken pursuant to this agreement are an element of a countywide or statewide environmental infrastructure system, only the features to be undertaken in this agreement should be included in the description of the project. Reminder: Do not include any lands, easements, rights-of-way, (LER) or relocations requirements of the project in this description.

B. The title and date of the decision document that describes the project should be included (such as Scope of Work, Feasibility Report with Engineering Appendix, General

Reevaluation Report, etc.). Also include the title of the approving official (such as Assistant Secretary of the Army (Civil Works); Chief of Engineers; Commander, \_\_\_\_\_ Division; or Commander, \_\_\_\_\_ District) and the date of approval. The civilian format for any dates included in the agreement should be used. (Example: January 22, 2004)

C. For any projects where the proposed work is reconstruction, repair, or rehabilitation of existing environmental infrastructure features, the sponsor must verify in writing if it was constructed through any other Federal program and whether OMRR&R was required and that the proposed reconstruction, repair, or rehabilitation is not normal O&M activities required for the existing environmental infrastructure features. Performance of normal O&M activities should not be considered for implementation under this authority. The letter from the sponsor should be part of the PCA package. If the original construction of the environmental infrastructure feature was performed under a Federal program that required OMRR&R, you should consult with your MSC and your HQ RIT for guidance before proceeding any further.

10. **BETTERMENTS.** – A betterment is a difference in quality of an element of the project to be designed/constructed, not a difference in kind. (Example: install larger size or higher grade pipe than needed to meet Federal standards) The term “betterment” does not include any design or construction for features not included in the definition of the project as defined in the agreement.

#### 11. **LIMITATIONS ON REIMBURSEMENTS BY THE GOVERNMENT.**

A. Because the definition of total project costs expressly excludes any value of LER and relocations and permit costs in excess of 25 percent of total project costs, amounts to be reimbursed to the sponsor under these paragraphs will never include any value of LER and relocations or permit costs.

B. The amount of reimbursement provided pursuant to Article II.D. in any fiscal year is subject to the applicable limitations of Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103. The amount of reimbursement made under Article II.D. or VI.C.1. together with the credits or reimbursements proposed for all other applicable programs and projects cannot exceed the total limit indicated in each fiscal year. Each district should verify with your MSC and your HQ RIT to determine if you are impacted by this limitation.

#### 12. **ARTICLE II.E. - LIMITS ON FEDERAL PARTICIPATION.**

A. **CONGRESSIONAL ADD PARAGRAPH** – Article II.E.1. - The dollar amount to be included in the first blank should be the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement. The dollar amount to be included in the second blank should be that portion of available Section 595 Program funds for the applicable state that the district is projecting to be available for the project in this agreement, as of the effective date of the agreement. The

district, through the Project Coordination Team (Article V), shall work closely with each sponsor to plan execution of the project so that useful portions can be constructed as funds are made available. The sum of the amount of Federal funds made available for all the Section 595 agreements in the applicable state, including this one, plus the sum of Federal funds made available for overall management of the Section 595 Program allocated to the applicable state, cannot exceed the amount of Federal funds that have been appropriated for the Section 595 Program for the applicable state, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement, nor can it exceed the current Section 595 Program Limit for the applicable state, unless Congress has authorized an increase in the limit in Act language.

**B. SECTION 595 PROGRAM LIMITS – Article II.E.3. -** The Government will not issue work allowances for projects undertaken in any state pursuant to the Section 595 Program beyond the amount authorized to be appropriated in Section 595 for that state, currently \$55,000,000 for Idaho, \$25,000,000 for Montana, \$150,000,000 for rural Nevada, \$25,000,000 for New Mexico, \$50,000,000 for rural Utah, and \$30,000,000 for Wyoming.

**C. SUSPENSION OF GOVERNMENT PERFORMANCE – Article XIII.B. and Article XIII.C. -** If the Government suspends its future performance responsibilities, including reimbursement, under the agreement pursuant to Article II.E.2. or Article XIV.C., the sponsor, at its sole discretion, may continue work on the project. However the sponsor should understand that if they continue to work on the project during the period of suspension of the Government’s performance responsibilities, such work performed must comply with the conditions of Article II.C. of the agreement to be eligible for inclusion in total project costs and any reimbursement of the Federal share of such work once the Government has resumed its performance responsibilities. If the Section 102 Limit compels the Government to suspend reimbursement, but funds are otherwise available, the Government’s performance of its other obligations will not be suspended.

**13. COMPLETED PORTION OF THE PROJECT. –** Because Section 595 authorizes the provision of design and construction assistance, the concept of functional portions of the project has been deleted. The district should use its best judgment to determine when construction of a portion of the project is complete so that the sponsor can commence its operation and maintenance responsibility.

**14. ARTICLE II.L. - ADDITIONAL WORK. -** The Government should not accept any requests for 1) acquisition of LER necessary for betterments, 2) performance of relocations necessary for betterments, or 3) obtaining permits necessary for the project.

**15. ADDITIONAL ITEMS OF COOPERATION. -** Include any additional paragraphs in the agreement necessary to reflect special requirements of non-Federal cooperation specified in the decision document upon which the agreement is based. Carefully review the items of non-Federal cooperation in the decision document to ensure that all items of cooperation are covered in the agreement. When including any additional items of cooperation in the agreement, name the responsible party then include the item of cooperation contained in the decision document. (Example: The Non-Federal Sponsor



shall ...) Including the additional items of non-Federal cooperation in the agreement is not considered a deviation from the model unless additional language is required elsewhere in the agreement to further address the added item of cooperation.

16. GUIDANCE ON APPRAISALS. - See Chapter 12 of ER 405-1-12 for guidance on applicable rules including use of Federal versus State rules in preparing an appraisal.

17. ARTICLE VI.A. – BREAKDOWN OF PROJECT COSTS.

A. The costs shown in Article VI.A.1. should be the current estimate of the costs at current price levels and inflated through the estimated mid-point of construction.

B. To determine the reimbursement of the Federal share due to the sponsor in accordance with II.D.: Step (1) determine the Government's share of total project costs; Step (2) subtract from the Government's share of total project costs the amount of total project costs to be incurred by the Government; the difference is the reimbursement of the Federal share due to the sponsor that should be shown in the sixth blank in Article VI.A.1. Example:

total project costs = \$2,000,000

total project costs to be incurred by the Government = \$75,000

total project costs to be incurred by the sponsor = \$1,925,000

Step 1 -  $(\$2,000,000 \times .75) = \$1,500,000$  - Government's share of total project costs

Step 2 -  $\$1,500,000 - \$75,000 = \$1,425,000$  - reimbursement due to sponsor

C. The blank in Article VI.A.2. should be filled in with the date (month, year) of the first quarterly report of costs to be provided to the sponsor.

18. ARTICLE VI.C. - FINAL ACCOUNTING.

A. When a final accounting cannot be conducted in a timely manner because of outstanding claims and appeals or eminent domain proceedings, an interim accounting should be conducted. The district should use its best judgment in determining whether to conduct an interim accounting or wait for final resolution of outstanding claims and appeals or eminent domain proceedings.

B. Nothing in the agreement, prevents any interim accountings from being conducted prior to the end of the period of design and construction.

19. TIMING OF FIRST REQUEST FOR SPONSOR'S FUNDS. – Insert the number of days (should be 60 or more). The last sentence of this paragraph states that the sponsor is required to provide the requested funds no later than 30 calendar days prior to the Government incurring any financial obligations for additional work. Therefore any number less than 60 will give the sponsor less than 30 days notice prior to when the funds must be provided to the Government.

20. LENGTH OF TIME TO PROVIDE ADDITIONAL FUNDS. – Insert the number of

days. The period of time should not exceed the time shown unless the District Engineer approves a longer period of time after determining that the longer period of time will not result in delays to the project (including contract modifications) or the Government using its funds to meet a shortfall in the sponsor's funds. The district must determine the need for additional funds from the sponsor far enough ahead of time to permit the sponsor full use of the specified period of time. Neither party's funds should be used to meet any shortfall in the other party's funds.

**21. INSPECTION OF COMPLETED WORKS.** – Due to the wide variety of potential projects to be undertaken in the future pursuant to this authority, the district may want to inspect some completed projects during the O&M phase. While this inspection is not mandatory, the decision to perform any inspection should be based on the specifics of the project. **Reminder:** Article VIII.B. is not an optional paragraph. It must be included in all agreements regardless of the level of inspections proposed to be performed.

**22. ARTICLE IX – HOLD AND SAVE.** - Include the optional language after the colon only if optional Article XIX - Obligations of Future Appropriations (see note 26) is included in the agreement and the sponsor requests this optional language be added to Article IX of the agreement. In addition, if this language is included, delete the "The". **Reminder:** The entire article is not optional as only the phrase shown in the brackets is optional.

**23. ARTICLE XIV - HAZARDOUS SUBSTANCES.** – In accordance with paragraph A. of this Article, the sponsor is to perform or ensure performance of investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on lands, easements, and rights-of-way necessary for the project. It is Army policy that the sponsor either perform these investigations in-house or contract for their performance with a third party. The Government should not perform these investigations on behalf of the sponsor. However, as stated in this article, the Government performs, or instructs the sponsor to perform investigations required on lands, easements, and rights-of-way that are subject to navigation servitude. For additional explanation, refer to ER 1165-2-132.

**24. ARTICLE XV - NOTICES.** – Insert the full address of the sponsor and Government - including titles or office title/symbol of individuals to receive the notices. Do not include the name of the individual to receive the notices as it may change throughout the life of the agreement.

**25. ARTICLE XVIII – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES.** – Article XVIII is optional and can be deleted if requested by the sponsor. If the article is deleted, renumber the remaining articles in the agreement and verify the references throughout the agreement to the remaining articles. In particular, if the article addressing Obligations of Future Appropriations is included in the agreement, and the sponsor requests the optional language in Article IX (see note 22) verify the reference contained in Article IX to the article addressing Obligations of Future Appropriations and correct, as necessary. Renumbering the remaining articles in the agreement and correction of all

references to the remaining articles are not considered a deviation from the model.

**26. ARTICLE XIX – OBLIGATIONS OF FUTURE APPROPRIATIONS.** - Include optional Article XIX in the agreement only if the sponsor requests this language and only after your District Counsel determines, in writing after review of information supporting the request from the sponsor, that the sponsor is a State agency or a political subdivision of the State that derives its funds for the project directly from appropriations and the sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in the first three blanks in Article XIX.A. should identify the body that makes the appropriations. (Example: Legislature of the State of Ohio or City Counsel of the City of Cleveland)

**27. ARTICLE XIX.A. - ADDITIONAL RESTRICTION ON OBLIGATIONS OF FUTURE APPROPRIATIONS.** - Include the optional language after the colon if requested by the sponsor. The information to be included in the blanks should provide more detailed information on the location of the obligation of future appropriations restriction. (Example: Section 7 of the City Charter of the City of Cleveland)

**28. SPONSOR’S BUDGET CYCLE.** - Choose Option (1) if the sponsor has a 1 year budget cycle or Option (2) if the sponsor has a 2 year budget cycle.

**29. ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY.** – Include optional Article XX only if the sponsor is a Native American Tribe. The information to be included in the first and third blanks should be the name of the instrument (resolution, ordinance, etc) where the sponsor has waived sovereign immunity. The information to be included in the fourth blank should be the title of the sponsor’s representative (see note 6).

**30. TITLE OF GOVERNMENT REPRESENTATIVE.** – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. If the signature authority is delegated to the district, the phrase “District Engineer” should be used in this location. If the signature authority is not delegated, the title shown should match the title of the Government representative shown in the first paragraph (see note 4).

**31. CERTIFICATE OF AUTHORITY.** - The person signing the Certificate of Authority cannot be the signatory to the agreement. The person signing the Certificate of Authority is certifying that the signatory to the agreement has the authority to obligate the sponsor. Do not forget to fill in the name in the first line prior to execution of the agreement.

**32. PREPARING AGREEMENT FOR SIGNATURE.**

A. When printing the agreement for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the agreement; 2) ensure that the appropriate information has been included in all blanks in the agreement and the Certificate of Authority; 3) ensure that titles of articles are not the last thing at the bottom of the page; and 4) ensure that there are no page breaks which allow half empty pages. Reminder: Do not remove any of the *italics* from the agreement.

B. If the signature authority has been delegated to the District Engineer: 1) the title of the Government representative in the first paragraph (see note 4) should be "U.S. Army Engineer, \_\_\_\_\_ District"; 2) the title of the Government representative in the last paragraph (see note 30) should be "District Engineer"; and 3) since this is a civilian document use the civilian version of the District Engineer's signature block.

C. If the signature authority is not delegated, the title in the first paragraph (see note 4) and last paragraph should match the title of the Government representative shown in the signature block.

D. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement, not the sponsor.

E. The Government should retain two fully executed copies of the agreement. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC and the appropriate HQ RIT) of the fully executed agreement should be provided to the MSC and to the appropriate HQ RIT within 14 days after execution of the agreement.

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
[FULL NAME OF NON-FEDERAL SPONSOR]  
FOR  
DESIGN AND CONSTRUCTION  
ASSISTANCE  
FOR THE  
[FULL NAME OF PROJECT]

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the [SEE NOTE - 4] and [FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 5] (hereinafter the "Non-Federal Sponsor"), represented by [SEE NOTE - 6].

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

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

[SEE NOTE - 7]

**OPTION 1**

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

**OPTION 2**

WHEREAS, Section 595 provides that \$25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Montana pursuant to the Section 595 Program;

**OPTION 3**

WHEREAS, Section 595 provides that \$150,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Nevada pursuant to the Section 595 Program;

#### OPTION 4

WHEREAS, Section 595 provides that \$25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in New Mexico pursuant to the Section 595 Program;

#### OPTION 5

WHEREAS, Section 595 provides that \$50,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in rural Utah pursuant to the Section 595 Program;

#### OPTION 6

WHEREAS, Section 595 provides that \$30,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Wyoming pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, \_\_\_\_\_ District (hereinafter the "District Engineer") has determined that [FULL NAME OF THE PROJECT] in [SPECIFIC LOCATION OF THE PROJECT, INCLUDING COUNTY & STATE] (hereinafter the "Project", as defined in Article L.A. of this Agreement) is eligible for implementation under Section 595;

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

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* [SEE NOTE – 8: including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary];

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable programs and projects in each fiscal year;

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

for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

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

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

#### ARTICLE I - DEFINITIONS

[SEE NOTE - 9]

A. The term "*Project*" shall mean \_\_\_\_\_ in \_\_\_\_\_ as generally described in the [FULL TITLE OF DECISION DOCUMENT], dated \_\_\_\_\_, \_\_\_\_\_ and approved by \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: [SEE NOTE - 8: the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the

Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

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

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

[SEE NOTE - 10]

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

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

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



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

[SEE NOTE - 7]

**OPTION 1**

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

**OPTION 2**

J. The term “*Section 595 Program Limit for Montana*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Montana pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$25,000,000.

**OPTION 3**

J. The term “*Section 595 Program Limit for rural Nevada*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Nevada pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$150,000,000.

**OPTION 4**

J. The term “*Section 595 Program Limit for New Mexico*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in New Mexico pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$25,000,000.

**OPTION 5**

J. The term “*Section 595 Program Limit for rural Utah*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in rural Utah pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$50,000,000.

**OPTION 6**

J. The term “*Section 595 Program Limit for Wyoming*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Wyoming pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$30,000,000.

K. The term “*Section 102 Limit*” shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

[SEE NOTE - 8]

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

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

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

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

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter “NEPA”). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

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

policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

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

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

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

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

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

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

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

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

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

[SEE NOTE - 11]

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho*. (2) *Section 595 Program Limit for Montana*. (3) *Section 595 Program Limit for rural Nevada*. (4) *Section 595 Program Limit for New Mexico*. (5) *Section 595 Program Limit for rural Utah*. (6) *Section 595 Program Limit for Wyoming*.]

[SEE NOTE - 12]

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

1. As of the effective date of this Agreement, \$\_\_\_\_\_ of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] of which \$\_\_\_\_\_ is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

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

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] has reached the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho*, (2) *Section 595 Program Limit for Montana*, (3) *Section 595 Program Limit for rural Nevada*, (4) *Section 595 Program Limit for New Mexico*, (5) *Section 595 Program Limit for rural Utah*, (6) *Section 595 Program Limit for Wyoming*,] and the Government projects that the Federal funds the Government will make available to the *Project* within the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho* (2) *Section 595 Program Limit for Montana* (3) *Section 595 Program Limit for rural Nevada* (4) *Section 595 Program Limit for New Mexico* (5) *Section 595 Program Limit for rural Utah* (6) *Section 595 Program Limit for Wyoming*] will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the

Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho*, (2) *Section 595 Program Limit for Montana*, (3) *Section 595 Program Limit for rural Nevada*, (4) *Section 595 Program Limit for New Mexico*, (5) *Section 595 Program Limit for rural Utah*, (6) *Section 595 Program Limit for Wyoming*,] the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

[SEE NOTE - 13]

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

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

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of

such legal and institutional structures.

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

[SEE NOTE - 14]

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

[SEE NOTE - 8]

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

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

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

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

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

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

[SEE NOTE - 15]

#### ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be



necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits

pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. [SEE NOTE - 16] The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal

Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness,

allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) Nevada (4) New Mexico (5) Utah (6) Wyoming] would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of

the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

#### ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

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

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for

*relocations* and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

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

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

## ARTICLE VI - METHOD OF PAYMENT

[SEE NOTE - 17]

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement [SEE NOTE - 8; , and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement].

1. As of the effective date of this Agreement, *total project costs* are projected to be \$ \_\_\_\_\_; the Government's share of *total project costs* is projected to be \$ \_\_\_\_\_; the Non-Federal Sponsor's share of *total project costs* is projected to be \$ \_\_\_\_\_; *total project costs* to be incurred by the Government are projected to be \$ \_\_\_\_\_; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$ \_\_\_\_\_; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$ \_\_\_\_\_; the value included

in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be \$ \_\_\_\_\_; [SEE NOTE - 8: the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be \$ \_\_\_\_\_;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$ \_\_\_\_\_; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$ \_\_\_\_\_; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be \$ \_\_\_\_\_. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By \_\_\_\_\_ and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; [SEE NOTE - 8: the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement;] the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

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

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

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of

*total project costs* and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the “payment amount”) if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho* (2) *Section 595 Program Limit for Montana* (3) *Section 595 Program Limit for rural Nevada* (4) *Section 595 Program Limit for New Mexico* (5) *Section 595 Program Limit for rural Utah* (6) *Section 595 Program Limit for Wyoming*] or the *Section 102 Limit*.

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

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor’s account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

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

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

[SEE NOTE - 18]

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such



interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by the [SEE NOTE - 7 - CHOOSE: (1) *Section 595 Program Limit for Idaho* (2) *Section 595 Program Limit for Montana* (3) *Section 595 Program Limit for rural Nevada* (4) *Section 595 Program Limit for New Mexico* (5) *Section 595 Program Limit for rural Utah* (6) *Section 595 Program Limit for Wyoming*] and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than [SEE NOTE - 19] calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable

to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within [SEE NOTE – 20 - NOT TO EXCEED 30] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-

Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

[SEE NOTE - 21]

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

#### ARTICLE IX – HOLD AND SAVE

[SEE NOTE - 22: Subject to the provisions of Article XIX of this Agreement, the] The

Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and

regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

## ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

[SEE NOTE – 12]

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to

failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

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

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

[SEE NOTE – 23]

#### ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer

provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE NOTE - 24]

If to the Non-Federal Sponsor:

If to the Government:

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this



paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in [SEE NOTE - 7 - CHOOSE: (1) Idaho (2) Montana (3) rural Nevada (4) New Mexico (5) rural Utah (6) Wyoming] implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in [SEE NOTE - 7 - CHOOSE: (1) Idaho. (2) Montana. (3) rural Nevada. (4) New Mexico. (5) rural Utah. (6) Wyoming.] None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

[SEE NOTE – 25]

#### ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

[SEE NOTE – 26]

#### ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ [SEE NOTE - 27: , where creating such an obligation would be inconsistent with \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_].

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that [SEE NOTE - 28 - CHOOSE: (1) year, (2) biennium,] and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the

Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[SEE NOTE - 29]

ARTICLE XX – TRIBAL SOVEREIGN IMMUNITY

By \_\_\_\_\_ dated \_\_\_\_\_, the Non-Federal Sponsor waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such \_\_\_\_\_ authorized [SEE NOTE - 6] \_\_\_\_\_ to include such waiver as part of this Agreement. Accordingly, the Non-Federal Sponsor hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; (2) recover damages for any breach of the terms and conditions of this Agreement; and (3) seek indemnification or contribution based on the Non-Federal Sponsor's obligations under Article IX of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the [SEE NOTE - 30].

DEPARTMENT OF THE ARMY

(FULL NAME OF NON-FEDERAL SPONSOR)

BY:           [SIGNATURE]            
      [TYPED NAME]  
      [TITLE IN FULL]

BY:           (SIGNATURE)            
      (TYPED NAME)  
      (TITLE IN FULL)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

---

**Kendra Wong, Chairwoman  
IVGID Board of Trustees**

DATE: \_\_\_\_\_



October 2, 2019

Laura Whitney  
Program and Project Manager  
U.S. Army Corps of Engineers  
1325 J Street, 9th Floor  
Sacramento, California 95814-2922

RE: IVGID Effluent Export Pipeline Phase II Project Scope of Work

### **BACKGROUND**

The Incline Village General Improvement District (IVGID) first partnered with the US Army Corps of Engineers (USACE) in April 2003 under the Section 595 Program of the Water Resources Development Act, now WIINS, Water Infrastructure Improvements for the Nation, to tackle this extraordinary project to rehabilitate a 21-mile pipeline that exports treated wastewater out of the Lake Tahoe Basin. IVGID is a small public utility that provides water and wastewater service for a year round population of about 10,000 residents in the communities of Incline Village and Crystal Bay on the north shore of Lake Tahoe. In 1970, this 21 mile pipeline was installed as part of the regional effort to protect Lake Tahoe's water quality by requiring all wastewater effluent to be exported out of the basin.

The original pipe, now almost 50 years old, is reaching the end of its useful life and ongoing corrosion has caused failure at multiple locations. Early phases of this project investigated the whole pipeline and prioritized the replacement schedule to maintain this critical infrastructure. Within the Tahoe Basin this pipe was divided into three segments. Segment 1 is the low pressure supply pipe to the pump station near Sand Harbor. Segment 2 is the welded steel high pressure discharge pipe exiting the pump station. Segment 3 is the remaining low pressure jointed steel transmission pipeline within the Tahoe Basin running south to Spooner Summit.

Phase 1 work completed has replaced all four miles of Segment 1 pipe within NDOT right-of-way as well as two miles of Segment 3 pipeline that crosses through State Park lands at Spooner Lake. Another critical component of these projects was the elimination of two small wastewater treatment plants located at Sand Harbor and Memorial Point State Parks which are located next to Lake Tahoe. The wastewater is now pumped directly to IVGID for treatment at the regional plant. IVGID's original Spooner Pumping station was also completely renovated with improved emergency pumping capacity.

Overall, IVGID has been diligently pursuing the replacement of the effluent export pipeline since 2003 in the Lake Tahoe Basin. Total capital expenditures to date have been \$22.8 million over the last 16 years to replace the aging effluent export system. IVGID has received \$15.4 million in



GENERAL IMPROVEMENT DISTRICT

funding from the WRDA Section 595 program through a Project Cooperation Agreement with the United State Army Corps of Engineers.

The District has now placed in its capital improvement plan an additional \$23 million in expenditures to replace the remaining six miles of effluent pipeline in the Lake Tahoe Basin. The capital plan has been approved by the IVGID Board of Trustees. The IVGID Board of Trustees has also already approved four consecutive years of 10% sewer rate increases (2011, 2012, 2013 and 2014), a 45% total increase to sewer rates, to accumulate the funds for this critical infrastructure replacement. The District is now collecting from our rate payers an additional \$2 million per year to fund this project.

### **EFFLUENT EXPORT PIPELINE PHASE II PROJECT**

#### **Effluent Export Pipeline Phase II Replacement – 2019-2023**

The project represents an onerous and unusual infrastructure requirement for a small utility district. This challenge is also unique to the Lake Tahoe basin in that the pipeline replacement helps assure the protection of a national environmental resource. In 2011, IVGID began engineering design for the complete replacement of the remaining six miles of Phase II export pipeline within the Lake Tahoe basin. Preliminary cost estimates are at \$23 million (in 2021 Dollars) for the work in this narrow mountainous highway corridor. The predesign cost estimate is provided as an attachment.

Phase II will replace all of the remaining Segment 3 pipeline (13,700 linear feet) and portions or all of Segment 2 pipeline (17,300 linear feet) pending results of final condition assessment and design. Segment 3 experienced significant leaks in 2009 and 2014 and subsequent investigations confirmed progressive corrosion of this bell and spigot pipe with wholesale replacement required. Segment 2 is undergoing additional condition assessment efforts as it was constructed of more robust welded steel and has not had a history of failures. Final design will dictate whether Segment 2 work will be of limited scope or complete replacement.

Phase II work will be completed over multiple years in a manner similar to Phase I of the Effluent Export Pipeline Project. Like Phase 1, pipe in State Route 28 be replaced using open-cut construction moving the pipeline to the center of the Southbound travel lane. However alternatives now include co-locating with the planned Stateline-to-Stateline bikeway slated to parallel State Route 28 and potentially avoid the complications of working in the State Highway.

IVGID is a partner with the Tahoe Transportation District (TTD) in the Lake Tahoe SR 28 Corridor Management Plan that will construct portions of the Stateline-to-Stateline bikeway on the Nevada side of Lake Tahoe near the existing pipeline. TTD and IVGID completed a preliminary engineering investigation that determined it feasible to co-locate the effluent pipeline with the Bike Path in a new alignment adjacent to the SR 28 corridor from near Sand Harbor to Spooner Junction. IVGID joined the TTD in a cost sharing agreement to complete the Environment

PUBLIC WORKS DEPARTMENT  
1220 SWEETWATER ROAD · INCLINE VILLAGE NV 89451  
PH: (775) 832-1203 · FAX: (775) 832-1260 · WWW.IVGID.ORG



GENERAL IMPROVEMENT DISTRICT

Assessment of both alignment alternatives of the pipeline replacement. Should the Bike Path project proceed, there exists a unique partnership to deliver an outstanding recreational opportunity along with replacing the pipeline in a cost effective and expeditious manner. There are numerous advantages for operating and maintaining the pipeline under a bike path as opposed to under the busy SR-28 corridor.

The USDA Forest Service, Lake Tahoe Basin Management Unit (LTBMU), on July 10, 2019, issued the draft Environmental Assessment (EA) for the SR-28 Shared use Path, Parking, Safety and Environmental Improvements Project. This EA also included the relocation of utilities, including effluent pipeline, communications, and electrical. The comment period has closed, comments are being analyzed and the LTBMU will determine the next steps. This EA should complete the necessary environmental documentation for all effluent pipe construction and/or relocation.

Project conditions dictate that IVGID's pipeline work be completed as a multi-year project. Similarly the proposed bikeway nearby will be phased over multiple seasons and may be subject to additional unique constraints.

#### **CONCEPTUAL PROJECT SCHEDULE**

- **2019-20 Evaluation:** Engineering review of 2018 Condition assessment data and near term design of repairs, if needed.
- **2020-21 Repairs:** Construct any repairs identified from 2018 Condition assessment data evaluation.
- **2020-21 Phase II Final Design:** Design for the remaining thin-wall Segment 3 pipeline replacement – 13,700 lf and identified Segment 2 pipeline - up to 17,300 lf
- **2021-26 Tahoe Basin Pipeline Replacement:** The replacement in phases of up to 31,000 feet of pipeline in highway. Short construction windows require 4 to 6 years to complete.

#### **PRELIMINARY CONSTRUCTION COST ESTIMATE**

A preliminary construction cost estimate was prepared by the pipeline engineering design firm in the pre-design phase and is attached to this scope of work. The District is currently under contract to perform design and condition assessment for the Effluent Export Project Phase II Project for segment 2 and segment 3 pipelines. The District is requesting these costs be included in the total project costs for this scope of work.



GENERAL IMPROVEMENT DISTRICT

**CONCEPTUAL PROJECT BUDGET**

Attached is the HDR May 30, 2012 - Estimate of Probably Construction Cost for the 16 inch Effluent Pipeline. This estimate assumes a 2021 construction start date with 4% escalation.

**ESTIMATED FISCAL YEAR (FY) BUDGET**

	Estimated Cost
<b>FY 2019</b>	
Design and Assessment Costs	<b>\$522,180</b>
<b>FY 2020</b>	
IVGID Administrative Costs	\$100,100
Design	\$500,800
<b>Subtotal</b>	<b>\$600,900</b>
<b>FY 2021</b>	
IVGID Administrative Costs	\$156,000
Design	\$780,000
<b>Subtotal</b>	<b>\$936,000</b>
<b>FY 2022</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>FY 2023</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>FY 2024</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>FY 2025</b>	
IVGID Administrative Costs	\$256,100
Construction Administration & Management	\$320,000
Construction	\$4,803,000
<b>Subtotal</b>	<b>\$5,379,100</b>
<b>TOTAL</b>	<b>\$23,575,480</b>





**PROJECT LOCAL SHARE**

IVGID presently has sufficient funds in Utility Fund Balance to provide the necessary funding for design, permitting and construction phase costs.

Very sincerely yours,

A handwritten signature in blue ink, appearing to read "Joseph J. Pomroy".

Joseph J. Pomroy, P. E.  
Director of Public Works

Job No. 00116-156363				
Computation				
Project	IVGID Export Pipeline Project, Phase II		Computed	HDR
Subject	Estimate of Probable Construction Cost - 16 inch Effluent Pipeline		Date	5/30/2012
Task	PreDesign Cost Estimate - Single Bid		Reviewed	IVGID
Start	2021 construction start with assumed 4% escalation		Date	6/4/2012
	QUANTITY	UNITS	UNIT PRICE	TOTAL COST
<b>DIVISION 1 - GENERAL REQUIREMENTS</b>				
Mobilization and Demobilization (10%)	1	LS	\$1,311,829	\$1,311,829
Insurance and Bonds (3%)	1	LS	\$393,549	\$393,549
SUBTOTAL				\$1,705,377
<b>DIVISION 2 - SITE WORK</b>				
Mitigation and Environmental Controls	1	LS	\$250,000	\$250,000
Asphalt Cutting	59,400	LF	\$3.95	\$234,499
Repaving - Trench Section	178,200	SF	\$5.26	\$937,996
Asphalt Overlay (1 inch open-graded) and Rotomill	356,400	SF	\$1.32	\$468,998
Asphalt Stripping	59,400	LF	\$0.99	\$58,625
Excavation (Soil)	21,945	CY	\$32.90	\$721,953
Excavation (Rocks)	1,155	CY	\$789.56	\$911,941
Hauling and Disposal (Soil and Rocks)	14,135	CY	\$23.69	\$334,813
Shoring	29,700	LF	\$10.53	\$312,665
Backfill and Compaction (Intermediate)	8,965	CY	\$59.22	\$530,880
Backfill and Compaction (Initial Backfill)	4,619	CY	\$59.22	\$273,498
Bedding Material	1,100	CY	\$59.22	\$65,139
Aggregate Base	3,300	CY	\$59.22	\$195,416
Grout Existing Effluent Pipeline	1,816	CY	\$296.08	\$537,817
Traffic Control	1	LS	\$200,000.00	\$200,000
Blow off Valves (Installation and Miscell.)	5	EACH	\$986.95	\$4,935
AVRV manholes	11	EACH	\$3,947.80	\$43,426
SUBTOTAL				\$6,082,599
<b>DIVISION 3 - CONCRETE</b>				
Concrete Pipe Cover	1,650	CY	\$263.19	\$434,257
SUBTOTAL				\$434,257
<b>DIVISION 15 - MECHANICAL</b>				
<b>PIPES</b>				
8 inch DI (Blowoff)	75	LF	\$105.27	\$7,896
2 inch HDPE pipe	176	LF	\$6.58	\$1,158
16-inch DIP Pipe	29,700	LF	\$210.55	\$6,253,308
<b>FITTINGS</b>				
DIP Fittings (Assume 3% of Pipe Cost)	1	LS	\$188,000	\$188,000
<b>VALVES</b>				
2 inch AVR V	11	EACH	\$2,631.86	\$28,950
2 inch Gate Valve	11	EACH	\$197.39	\$2,171
8 inch Gate Valve (Blowoff)	5	EACH	\$1,315.93	\$6,580
16 inch Butterfly Valves	2	EACH	\$5,263.73	\$10,527
Valve Boxes (Blowoff)	10	EACH	\$657.97	\$6,580
Valve Extension Rod and Casing (Blowoff)	5	EACH	\$986.95	\$4,935
Tie-in	2	EACH	\$6,579.66	\$13,159
Pipeline Pressure Testing	29,700	LF	\$2.63	\$78,166
SUBTOTAL				\$6,601,430
<b>Subtotal 1 (Division Total)</b>				\$14,823,664
Contractor Overhead and Profit (8% of Subtotal 1)				\$1,185,893
<b>Subtotal 2</b>				\$16,009,557
Construction Contingencies (20% of Subtotal 2)				\$3,201,911
Design (8% of Subtotal 2)				\$1,280,765
Administrative Costs (8% of Subtotal 2)				\$1,280,765
Construction Management (8% of Subtotal 2)				\$1,280,765
<b>Subtotal 3</b>				\$23,053,763
<b>TOTAL ESTIMATED PROJECT COST</b>				\$23,053,763

**MEMORANDUM**

**TO:** Board of Trustees

**THROUGH:** Steven J. Pinkerton  
General Manager

**THROUGH:** Joseph J. Pomroy, P.E.  
Director of Public Works

**FROM:** Bradley A. Johnson, P.E.  
Director of Asset Management

**SUBJECT:** Review, discuss, and possibly authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT) **and** review, discuss, and possibly authorize an Additional Services Addendum for Construction Inspection Services for Repairs of the Effluent Export Pipeline – 2017/2018 CIP Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendors: NDOT in the Amount of \$1,002,600 and Tri Sage Consulting in the Amount of \$65,000

**STRATEGIC PLAN:** Long Range Principle #5 – Assets and Infrastructure

**DATE:** August 11, 2017

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**I. RECOMMENDATION**

That the Board of Trustees moves to:

1. Authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT), in the amount of \$1,002,600, for the construction of effluent export pipeline repairs as part of the State Route 28 Shared Use Pathway Project.
2. Authorize Staff to sign the agreement based on a review by General Counsel and Staff.

Review, discuss, and possibly authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT) and Authorize an Additional Services Addendum for Construction Inspection Services for Repairs of the Effluent Export Pipeline – 2017/2018 CIP Project; Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendors NDOT in the Amount of \$1,002,600 and Tri Sage Consulting in the Amount of \$65,000

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August 11, 2017

3. Authorize Staff to approve change orders to the construction contract for additional work not anticipated at this time of up to 15% of the project bid – \$150,000.
4. Authorize Staff to enter into an Additional Services Addendum with Tri Sage Consulting totaling \$65,000 for construction inspection services during completion of the project.

## **II. DISTRICT STRATEGIC PLAN**

Long Range Principle #5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- The District will maintain, procure, and construct District assets to ensure safe and accessible operations for the public and the District's workforce.

2015 – 2017 Strategic Plan Objective #3 – Complete condition analysis and project scoping for the Effluent Export Project – Phase II.

## **III. BACKGROUND**

The District's effluent export pipeline transports treated wastewater from the District's water resource recovery facility to the disposal point at the District's wetlands facility southeast of Carson City. This pipeline was constructed in 1970 as part of a regionally mandated effort to eliminate all wastewater effluent discharges in the Lake Tahoe Basin. The effluent export pipeline has been in continuous service since that time and is comprised of five segments totaling approximately 21-miles in length. Three segments. (Segments 1-3), totaling approximately 12-miles, are located within the Lake Tahoe Basin.

Review, discuss, and possibly authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT) and Authorize an Additional Services Addendum for Construction Inspection Services for Repairs of the Effluent Export Pipeline – 2017/2018  
CIP Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendors NDOT in the Amount of \$1,002,600 and Tri Sage Consulting in the Amount of \$65,000

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August 11, 2017

As part of the original Effluent Export Project, the District replaced approximately 6-miles of 16-inch diameter effluent export pipeline in the Lake Tahoe Basin. This was accomplished in multiple phases (starting in 2006 and finishing in 2009) and included approximately 18,000-linear feet of Segment 1 (Incline Village to Sand Harbor) and 11,000-linear feet of Segment 3 (around Spooner Meadow). During planning and design of the first phase approximately 13,700-linear feet of Segment 3 and all 17,300-linear feet of Segment 2 were identified to be in good condition and were not identified for replacement. These pipeline segments are in the southbound shoulder of State Route 28 between Sand Harbor and Spooner Meadow.

In August of 2009, a pipe break within the un-replaced portion of Segment 3 washed out State Route 28. An investigation conducted by District Staff and a District hired corrosion consulting engineer revealed areas of advanced corrosion on the damaged pipeline section indicating the un-replaced portions of the export line may be nearing the end of their service life and replacement of the remaining pipeline should be planned and budgeted.

A second significant pipe break within the un-replaced portion of Segment 3 occurred on April 17, 2014 and again caused significant damage to State Route 28 and forced the shutdown of the southbound lane for two days.

At the January 5, 2011 and the October 10, 2012 meetings, the Board of Trustees authorized preliminary engineering services contracts with HDR Engineering to begin Phase II of the Effluent Export Project. The project was initially scoped to replace the two remaining sections within the Lake Tahoe Basin (a total length of approximately 6-miles). Segment 2 is comprised of approximately 17,300-linear feet of welded, cement mortar lined, high pressure steel pipe. The remaining 13,700-linear feet of Segment 3 is comprised of bell and spigot, cement mortar lined, low pressure steel pipe.

During the construction of the Spooner Pumping Station Improvements Project during the summer of 2012, a section of the high pressure welded steel pipe in Segment 2 was removed. The condition of this pipe section was better than anticipated and, if the section examined is representative of the condition of the

Review, discuss, and possibly authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT) and Authorize an Additional Services Addendum for Construction Inspection Services for Repairs of the Effluent Export Pipeline – 2017/2018  
CIP Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendors NDOT in the Amount of \$1,002,600 and Tri Sage Consulting in the Amount of \$65,000

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rest of Segment 2, could mean replacement of some or all of Segment 2 is not necessary in the near future.

At the April 30, 2014 meeting, the Board of Trustees authorized contracts with PICA Corp and HDR to complete non-destructive electromagnetic inspection, using high-resolution remote field technology (RFT), of Segment 2 and the unreplaced portions of Segment 3 of the effluent export pipeline.

The inspection work utilized PICA's "SeeSnake" assessment tool. The SeeSnake is a free swimming device employing RFT to identify localized areas of pipe wall loss and measure the depth and length of those local wall loss indications. The SeeSnake measures the time of flight and the signal strength of an electromagnetic signal emitted by an exciter coil contained in the "head" of the SeeSnake and detected by an array of receivers contained in the "tail" of the SeeSnake.

As part of their contract, HDR designed the piping improvements necessary at the Spooner Pumping Station to allow PICA's SeeSnake to be launched as well as the vault and piping improvements near Spooner Summit to allow tool retrieval. HDR also procured the necessary permits to allow completion of the improvements.

In late October 2014, the launch and retrieval piping improvements were constructed and in November 2014 PICA arrived to conduct condition assessment activities.

Prior to inserting the SeeSnake into the pipeline, PICA conducted a series of gauging test runs to ensure the SeeSnake would successfully travel the pipeline from the launching location to the retrieval location without becoming stuck or damaged. The gauging test runs started with a series of progressively larger soft foam "squeegee pigs" designed to clean the pipeline and remove any accumulated debris and then finished with a rigid "gauging pig" designed to replicate the SeeSnake. The gauging pig contains a sacrificial aluminum gauge plate designed to deform should the pig encounter any bore reductions in the pipeline that would cause the SeeSnake to become stuck. The gauging pig also contains a locator beacon to allow PICA to track and assess run progress and travel time as well as geo-locate any problem areas.

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During completion of the gauging test runs, the squeegee pigs were successfully launched and retrieved in good condition with little sign of damage or excessive debris. However, the rigid gauging pig encountered a bore reduction just outside the Spooner Pumping Station and sustained substantial damage during the test run. District Staff and PICA opted to end the pigging operation and not insert the SeeSnake tool until a physical assessment of the problem location could be conducted.

In early February 2015, the District exposed a pipeline dismantling joint outside the Spooner Pumping Station, drained the pipeline, and inserted a remotely operated track mounted camera into the pipe. The camera inspection revealed a reduction in the internal diameter of the pipe resulting from a short section of pipe where there was excessive cement mortar lining. This thickened lining was likely the result of a field applied mortar repair dating to the construction of the pipeline in 1970.

At the February 25, 2015 meeting, the Board of Trustees authorized a contract amendment with HDR to design and permit the necessary piping repairs to remove the bore restriction in the pipeline. The Board of Trustees also authorized a contract amendment with PICA to allow their team to remobilize to the site and complete an additional round of confirmatory gauging test runs followed by the comprehensive SeeSnake RFT evaluation.

The pipeline repair work was completed in August 2015 and PICA remobilized to complete condition assessment in September 2015. However, despite successful gauging runs, the SeeSnake tool was damaged during the first assessment run focused on Segment 3. This damage prevented the planned subsequent runs focused on Segment 2. Fortunately, despite the damage, the SeeSnake tool was able to collect comprehensive condition data on Segment 3. A future contract amendment with PICA will be required to allow data collection on Segment 2.

Analysis of the collected data identified a significant number of defects throughout the entire length of the un-replaced portions of Segment 3. This data confirms the District's planning approach for the complete replacement of remaining portions of Segment 3. Additionally, 13 locations were identified to require immediate

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replacement and cannot wait for a final approach for pipeline replacement to be developed. At the December 14, 2016 meeting, the Board of Trustees authorized a contract amendment with HDR to determine and design the extent of the immediate repairs and support completion of the work.

During completion of the design, the District approached NDOT about the logistics of completing the repair work within State Route 28 while NDOT was completing major work in the corridor as part of the State Route 28 Shared Use Pathway Project. As IVGID is a project stakeholder, it was suggested to have NDOT's contractor complete the pipeline repairs via the Pathway Project in order to simplify the coordination of construction efforts, minimize impacts to the public, and leverage project economies of scope and scale. Doing so is also the fastest means to completing the necessary repairs.

The proposed interlocal agreement allows Granite Construction (NDOT's contractor) to complete the repair work in conjunction with the Pathway Project work. The proposed improvements will replace 13 pipeline sections of 80 to 100-linear feet over approximately 2.5-miles. A total of 1,080-linear feet of Segment 3 pipeline will be replaced and, from that, a total of five 30-linear feet sections will be retrieved intact for shipment to PICA for additional study and further refinement of the condition assessment results. The repair work is proposed to be completed over approximately four weeks, working 24-hour shifts Monday thru Friday, starting in late September.

Once completed, the repair work will allow sufficient time for the District to continue with condition assessment of Segment 2, pursue federal funding to support pipeline replacement under the United States Army Corps of Engineers Section 595 program, and pursue potential co-location of a replacement pipeline with a future segment of the State Route 28 Shared Use Pathway. The repair work will also satisfy requirements of the Nevada Department of Environmental Protection (NDEP) Administrative Order issued to the District following the April 2014 pipeline failure.



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#### **IV. BID RESULTS**

NDOT publicly bid the State Route 28 Shared Use Pathway Project via the Construction Manager at Risk alternative project delivery method and has awarded a contract to Granite Construction. The District's pipeline repair work will be completed as a change order to NDOT's competitively bid project.

Granite Construction's pricing to complete the work totals \$1,002,600. The Engineer's Estimate to complete the work was \$900,000.

#### **V. FINANCIAL IMPACT AND BUDGET**

A total of \$1,000,000 is included in the 2017/2018 Capital Improvement Program budget under the Effluent Export Line – Phase II project (see attached data sheet) and there is an additional \$9,417,000 carried forward and available from previous years' CIP budgets.

The estimated project construction budget is presented in the following table.

#### **Project Construction Budget**

<b>Description</b>	<b>Amount</b>
Construction Contract	\$1,002,600
Construction Contingency at 15%	\$150,000
Special Inspection and Materials Testing	\$30,000
Construction Inspection Services	\$65,000
Engineering Services and District Staff Time	\$75,000
<b>Estimated Project Total</b>	<b>\$1,322,600</b>

Phase II of the Effluent Export Project has been identified and discussed in the District's annual rate study since 2011. Excerpts relating to the project from the annual rate study memorandums are attached to this memo as Exhibit A.

The utility rates are calculated from a rate model that determines the revenue needs to meet operating and capital expenses while maintaining prudent reserves. Once the revenue target is established, the water and sewer rates are adjusted to

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generate that revenue in the most equitable way possible. The revenue is also balanced among the various rate components to pay for fixed, variable, and capital components.

Utility rate increases are brought to the Board on an annual basis and are adjusted to meet the revenue needs at that time. The largest impact to the utility rates and the utility reserve fund is the amount of capital work to replace infrastructure and to install new infrastructure to meet regulatory requirements.

The unaudited unrestricted net position for the Utility Fund at the end of Fiscal Year 2016-17 is expected to approximate \$12.8 million with \$9.4 million accumulated for the Effluent Export Project. This equates to \$3.4 million in unencumbered unrestricted net position at the end of Fiscal Year 2016-17. The estimated reserve per policy is calculated at \$1.8 million. The Utility Fund meets the Policy and can rely on funds accumulated for the Effluent Export Project.

## **VI. ALTERNATIVES**

None. The NDEP's Administrative Order mandates the repair of the critical defects identified in the effluent export pipeline by the District's condition assessment efforts.

## **VII. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.



## Project Summary

<b>Project Number:</b>	2524SS1010	
<b>Title:</b>	Effluent Export Line - Phase II	
<b>Asset Class:</b>		
<b>Division:</b>	24 - Transmission	
<b>Budget Year:</b>	2018	
<b>Scenario Name:</b>	Main	<b>Active:</b> Yes
<b>Budget Status:</b>	Data Entry	
<b>Locations:</b>		
<b>Project Something:</b>	SS - Sewer System	

<b>Project Description</b>
<p>As part of the original Effluent Export Pipeline Project, IVGID replaced approximately 6-miles of 16-inch Export Pipeline. These included approximately 18,000 linear feet (LF) in Segment 1 and 11,000 LF in Segment 3. During planning and design of the first phase approximately 13,700 LF of Segment 3 and all 17,300 LF of Segment 2 were identified to be in good condition and were not identified for replacement. In August 2009, a pipe break within the unreplaced portion of Segment 3 washed out State Route 28. Investigation of the leak by IVGID staff and an IVGID-hired corrosion consulting engineer revealed areas of advanced corrosion on the damaged pipeline section, indicating that unreplaced portions of the export line may be nearing the end of their service and replacement of the remaining pipeline should be planned and budgeted.</p> <p>The proposed project, Effluent Export Pipeline Project - Phase II, will replace these two remaining sections within the Tahoe Basin (a total length of approximately 6 miles). Segment 2 is comprised of approximately 17,300 LF of welded, cement mortar lined, high pressure steel pipe. The remaining 13,700 LF of Segment 3 is comprised of bell and spigot, cement mortar lined, low pressure steel pipe. The project will be completed over multiple years in a manner similar to the original Effluent Export Pipeline Project. Like Phase I, the Export line will be replaced using open-cut construction, moving the pipeline to the center of the Southbound travel lane.</p> <p>The wastewater treatment plant operates two large pond/basins for emergency storage. The primary pond is the Upper Pond located directly south of the Wastewater Treatment Plant (WWTP). This man made basin is capable of holding approximately 2.8-million gallons. It is primarily used to store treated effluent during emergency periods when the effluent export system has been shut down for an extended period. The Nevada Division of Environmental Protection requires a lining of the upper Pond, that work will be covered under the Phase II.</p>
<b>Project Internal Staff</b>
The Engineering Department will manage all phases of this project.
<b>Project Justification</b>
<p>The effluent export line transports treated wastewater from Incline Village General Improvement District's (IVGID) wastewater treatment plant to the disposal point at the wetlands southeast of Carson City. This line was constructed in the early 1970's as part of a regional effort to eliminate all wastewater effluent discharges in the Lake Tahoe basin. The effluent export line has been in continuous service since that time. Approximately 6 miles of line was replaced as part of the Effluent Export Pipeline Project - Phase I. Phase II will pursue the replacement of the remaining 6 miles of pipe within the Tahoe Basin. Phase 2 will also include upper pond improvements to meet NDEP regulations for storage of effluent.</p> <p>The current Project Cooperation Agreement with the US Army Corps of Engineers will expire with the completion of the Phase I work. IVGID will look to enter into an expanded Project Cooperation Agreement with the US Army Corps of Engineers for 55% funding of all construction costs. The current political climate and financial issues in Washington D.C. make it unlikely that any future funding will be secured for this project. All grant funding has been removed for this project. IVGID will also place the project on the list for the Nevada State Revolving Loan Fund. Funding for this project will be the utility rates.</p>

<b>Forecast</b>				
<b>Budget Year</b>	<b>Total Expense</b>	<b>Total Revenue</b>	<b>Difference</b>	
<b>2018</b>				
Internal Services	100,000	0	100,000	
Pond Lining Costs	900,000	0	900,000	
Year Total	1,000,000	0	1,000,000	
<b>2019</b>				
Internal Services	100,000	0	100,000	
Pipeline Construction Costs	1,900,000	0	1,900,000	
Year Total	2,000,000	0	2,000,000	
<b>2020</b>				
Internal Services	100,000	0	100,000	
Pipeline Construction Costs	1,900,000	0	1,900,000	
Year Total	2,000,000	0	2,000,000	
<b>2021</b>				
Internal Services	100,000	0	100,000	
Pipeline Construction Costs	1,900,000	0	1,900,000	
Year Total	2,000,000	0	2,000,000	
<b>2022</b>				
Internal Services	100,000	0	100,000	
Pipeline Construction Costs	1,900,000	0	1,900,000	
Year Total	2,000,000	0	2,000,000	
<b>2023</b>				
Internal Services	100,000	0	100,000	
Pipeline Construction Costs	1,900,000	0	1,900,000	
Year Total	2,000,000	0	2,000,000	
	<b>11,000,000</b>	<b>0</b>	<b>11,000,000</b>	
<b>Year Identified</b>	<b>Start Date</b>	<b>Project Partner</b>	<b>Manager</b>	<b>Est. Completion Date</b>
2012			Director of Asset Management	

## Exhibit A

This document contains excerpts from Public Works Rate Studies Memorandum to the Board of Trustees from 2011 to 2017 that discuss the strategy for raising sewer utility rates to collect funds for the Effluent Export Project. District staff has been following this strategy that has been endorsed by the Board of Trustees with each corresponding utility rate adjustment since 2011.

### **2011 Rate Study Excerpt**

The second major project is the continuation of the Effluent Export Project to replace an additional 30,000 lineal feet of pipeline in the Tahoe Basin in the SR-28 right-of-way. On August 1, 2009 a significant leak occurred on the pipeline that caused a road failure and necessitated a \$225,000 repair. It has been determined that it is prudent to begin the replacement of this additional six miles of pipeline at a cost of \$23 million over the next 10 years. Currently the capital budget shows that 55% of this work is being funded through the Section 595 Program. This adds \$3.9 million in capital costs to the 5-year capital plan and \$10.2 million overall in the multi-year plan. In the past, the 595 program funded 75% of the costs. The increase in the District's share has increased the District's share of the costs by \$1.8 million in the five year CIP and by \$4.7 million overall in the multi-year plan by this change in the District's share from 25% to 45%. The Rate study has now been adjusted to increase the capital charge in sewer to collect additional revenue for the increase in costs. Last year's rate study included the Effluent Export costs at the 75% funded level.

### **2012 Rate Study Excerpt**

The second major project is the continuation of the Effluent Export Project to replace an additional 30,000 lineal feet of pipeline in the Tahoe Basin in the SR-28 right-of-way. On August 1, 2009 a significant leak occurred on the pipeline that caused a road failure and necessitated a \$225,000 repair. It has been determined that it is prudent to begin the replacement of this additional six miles of pipeline at a cost of \$23 million over the next 10 years. Last year's capital budget showed that 55% of this work is being funded through the Section 595 Program. The capital plan now shows no funding for the Effluent Export through the 595 Program since the Federal Government for the last three years has not increased the authorization level nor appropriated new funding.

This year's sewer rate adjustment continues the two year process to increase the CIP rate to account for the increase in the District's portion of funding the Export Project from 25% to 55%. In 2013, the proposed sewer rate will include a major increase to account for the District paying a 100% share of the Export Project.

## Exhibit A

### **2013 Rate Study Excerpt**

The single largest driver for rate increases in 2012, 2013, and 2014 is the necessary replacement of the effluent export pipeline. The Effluent Export Project objective is to replace an additional 30,000 lineal feet of pipeline in the Tahoe Basin in the SR-28 right-of-way. On August 1, 2009, a significant leak occurred on the pipeline that caused a road failure and necessitated a repair. It has been determined that it is prudent to begin the replacement of this additional six miles of pipeline at a cost of \$23 million over the next 10 years. Previous capital budgets showed that up to 75% of this work was to be funded through the Section 595 Program. The capital plan has been modified to receive no funding for the Effluent Export through the 595 Program since, for the last four years, the Federal Government has not increased the authorization level nor appropriated new funding.

This year's sewer rate adjustment continues the multi-year process to increase the Sewer CIP billing rate component to account for the increase in the District's portion of funding the Effluent Export Project from a 25% to 100% cost share. The proposed sewer rate will include a major increase to account for the District paying a 100% share of the Effluent Export Project costs. In 2014, the final major sewer rate increase will be proposed to meet the required funding level for the Effluent Export Project.

### **2014 Rate Study Excerpt**

The single largest driver for rate increases in 2012, 2013, and 2014 is the necessary replacement of the effluent export pipeline. The Effluent Export Project objective is to replace an additional 30,000 lineal feet of pipeline in the Tahoe Basin in the SR-28 right-of-way. On August 1, 2009, a significant leak occurred on the pipeline that caused a road failure and necessitated a repair. It has been determined that it is prudent to begin the replacement of this additional six miles of pipeline at an estimated cost of \$23 million over the next 10 years. Previous capital budgets showed that up to 75% of this work was to be funded through the Section 595 Program. The capital plan has been modified to receive no funding for the Effluent Export through the 595 Program since, for the last four years, the Federal Government has not increased the authorization level nor appropriated new funding.

This year's sewer rate adjustment continues the multi-year process to increase the Sewer CIP billing rate component to account for the increase in the District's portion of funding the Effluent Export Project from a 25% to a 100% cost share. The proposed 2014 sewer rate will include the final major increase to account for the District paying 100% of the Effluent Export Project costs.

### **2015 Rate Study Excerpt**

#### **Summary of Utility Rate Changes for the Effluent Export Project**

The Effluent Export Project has been the major driver in raising the sewer rates over the last four years and has been discussed in each of the last five utility rate studies. The District currently does not have sufficient reserves to fund this project and it has been necessary to collect the

## Exhibit A

funds through sewer rates in advance of the project. The District has initiated Phase II of the Effluent Export Project to replace the remaining six miles of effluent export pipeline in the Tahoe Basin at a cost of \$23.0 million. Previous capital budgets showed that up to 75% of this work was to be funded through the Section 595 Program. The District is still working with our Federal Legislative Advocate to secure new funding through the Section 595 program. The capital plan has been modified to show that we receive no funding for the Effluent Export, since the availability of these funds appears to be unlikely. The District is also pursuing funding options with other project partners.

The District has worked with the Tahoe Transportation District (TTD) for the last three years on the feasibility of co-locating the new effluent export pipeline with the Tahoe Bikē Path. At the October 2014 Board of Trustees meeting, the District entered into an amendment of the existing Interlocal Agreement that would allow the completion of the next steps of the project: completion of preliminary engineering and design and conducting the necessary environmental analysis of the proposed alignment to satisfy the National Environmental Policy Act (NEPA) and the Tahoe Regional Planning Agency (TRPA) requirements.

Should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, District Staff estimates there will be substantial savings by co-locating the pipeline within the bikeway. Depending on the total length of pipeline eventually replaced, the District could save upwards of \$7,000,000 via co-location and cost sharing with TTD over replacing the pipeline entirely within the SR-28 roadway.

At this time, borrowing costs for long term loans are quite high because of uncertainty in the economy. The District is also a low priority on the Clean Water State Revolving Loan Fund Project list and we do not expect to receive funding under current State Loan funding levels.

The portion of the sewer rate used to pay for infrastructure including the Effluent Export Project is called the CIP charge (capital improvement project charge). In 2010/11 this CIP charge was \$13.61 per residential user and increased to \$27.68 per residential user, a total increase of 103% in 4 years, or 20% per year for four years. This dramatic increase in the sewer CIP charge now funds the reserves in the amount of \$2 million per year so the funding of the Export Project will be completed by 2022. The District has collected over \$6 million to date and will therefore have eight more years of collecting these funds before consideration can be given to lowering the CIP charge.

### **Excerpt from 2016 Rate Study**

#### **Summary of CIP Rate Changes for the Effluent Export Project**

The Effluent Export Project has been the major driver in raising the sewer rates over the last four years and has been discussed in each of the last five utility rate studies. The District currently does not have sufficient reserves to fund this project and it has been necessary to collect the funds through sewer rates in advance of the project. The District has initiated Phase II of the Effluent Export Project to replace the remaining six miles of effluent export pipeline in the Tahoe

## Exhibit A

Basin at a cost of \$23 million. Previous capital budgets showed that up to 75% of this work was to be funded through the Section 595 Program. The District is still working with our Federal Legislative Advocate to secure new funding through the Section 595 program. The capital plan has been modified to show that we receive no funding for the Effluent Export, since the availability of these funds appears to be unlikely. The District is also pursuing funding options with other project partners.

The District has worked with the Tahoe Transportation District (TTD) for the last three years on the feasibility of co-locating the new section of effluent export pipeline with the Tahoe Bike Path. At the October 2014 Board of Trustees meeting, the District entered into an amendment of the existing Interlocal Agreement that would allow the completion of the next steps of the project: completion of preliminary engineering and design and conducting the necessary environmental analysis of the proposed alignment to satisfy the National Environmental Policy Act (NEPA) and the Tahoe Regional Planning Agency (TRPA) requirements.

Should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, District Staff estimates there will be substantial savings by co-locating the pipeline within the bikeway. Depending on the total length of pipeline eventually replaced, the District could save upwards of \$7,000,000 via co-location and cost sharing with TTD over replacing the pipeline entirely within the SR-28 roadway.

At this time, borrowing costs for long term loans are quite high because of uncertainty in the economy. The District is also a low priority on the Clean Water State Revolving Loan Fund Project list and we do not expect to receive funding under current State Loan funding levels.

### **Excerpt from 2017 Rate Study**

With the 2012-13 budget year, Public Works began accumulating \$2,000,000 per year in savings for the construction of the Effluent Export Project. We expect to have accumulated a total of \$10,000,000 by the early construction project start date in spring 2017. The sewer CIP will not be accumulating the \$2 million in capital for the export project in 2017-18 while we accomplish other CIP priorities and construct the effluent storage pond improvements as part of the export project.

### **Summary of CIP Rate Changes for the Effluent Export Project**

The Effluent Export Project has been the major driver in raising the sewer rates. The District currently does not have sufficient reserves to fund this project and it has been necessary to collect the funds through sewer rates in advance of the project. The District has initiated Phase II of the Effluent Export Project to replace the remaining six miles of effluent export pipeline in the Tahoe Basin at a cost of \$23 million. Previous capital budgets showed that up to 75% of this work was to be funded through the Section 595 Program. The District is still working with our Federal Legislative Advocate to secure new funding through the Section 595 program. The capital plan has been modified to show that we receive no funding for the Effluent Export. The District is also pursuing funding options with other project partners.



## Exhibit A

The District has worked with the Tahoe Transportation District (TTD) for the last three years on the feasibility of co-locating the new section of effluent export pipeline with the Tahoe Bike Path. At the October 2014 Board of Trustees meeting, the District entered into an amendment of the existing Interlocal Agreement that would allow the completion of the next steps of the project: completion of preliminary engineering and design and conducting the necessary environmental analysis of the proposed alignment to satisfy the National Environmental Policy Act (NEPA) and the Tahoe Regional Planning Agency (TRPA) requirements.

Should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, District Staff estimates there will be substantial savings by co-locating the pipeline within the bikeway. Depending on the total length of pipeline eventually replaced, the District could save upwards of \$7,000,000 via co-location and cost sharing with TTD over replacing the pipeline entirely within the SR-28 roadway.

At this time, borrowing costs for long term loans are quite high because of uncertainty in the economy. The District is also a low priority on the Clean Water State Revolving Loan Fund Project list and we do not expect to receive funding under current State Loan funding levels.

# Effluent Export Pipeline Project Summary and Repair Agreement Award August 22, 2017

Bradley A. Johnson, P.E. – Director of Asset Management  
Joseph J. Pomroy, P.E. – Director of Public Works



# District Strategic Plan

## **Long Range Principle #5 – Assets & Infrastructure**

The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation activities.

- Maintain, renew, expand and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- Maintain, procure and construct District assets to ensure safe and accessible operations for the public and the District's workforce.

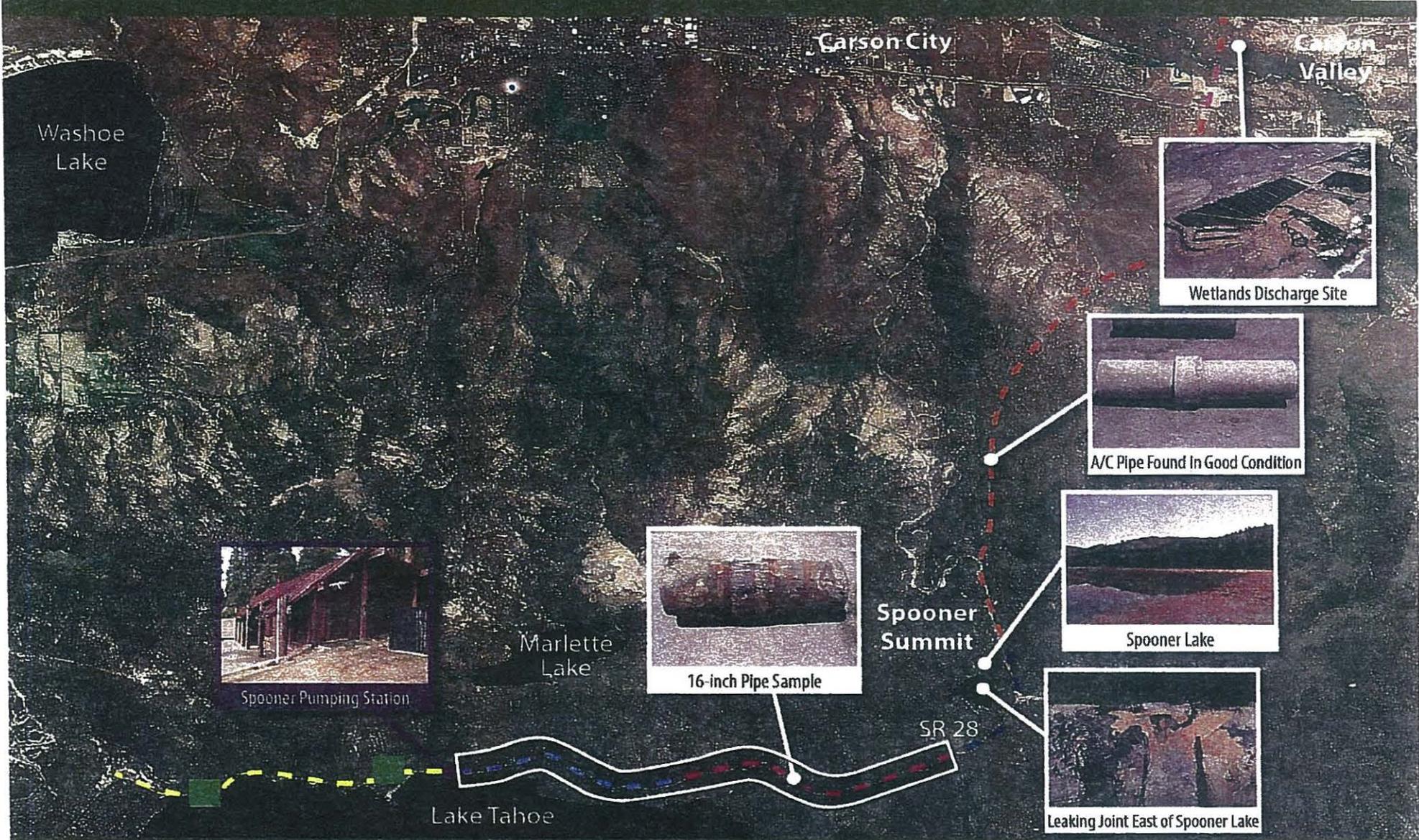
## **2015 – 2017 Strategic Plan – Objective #3**

- Complete condition analysis and project scoping for the Effluent Export Project – Phase II.

# Effluent Export System

- Part of a regionally mandated effort to eliminate all wastewater effluent discharges in the Lake Tahoe Basin
- Completed Construction in 1970
  - Approximately 21-miles of pipeline
  - Spooner Pumping Station
  - 500,000 gallon storage reservoir
  - 2.4 million gallon emergency storage pond (primary)
  - 13.5 million gallon emergency storage pond (secondary)

# IVGID: Protecting the Basin's Resources Today, for Tomorrow



- Segment 1 (Phase I)
  Segment 2
  Segment 3
  Segment 3 (Phase I)
- Segments 4 & 6 Existing Pipe to Remain in Service
  Segment 5 (Phase I)
  Phase II Effluent Export Pipeline

# Effluent Export Project – Phase I

- Pipeline replacement – 2006 to 2009
  - Segment 1 – 18,000-lf (~3.4-miles) from Incline to Sand Harbor
  - Segment 3 – 11,000-lf (~2.1-miles) around Spooner Meadow
  - Segment 5 – 1,100-lf (~0.2-miles) near Carson River
  - Sand Harbor and Memorial Point Projects
- Spooner Pumping Station – 2012
  - Expanded emergency power capacity
  - Improved pump redundancy and reliability
- Work completed in partnership with
  - USACE (Section 595 program)
  - State of Nevada

# Effluent Export Project - Phase I

Project	Year	Total Project Cost	USACE Share	IVGID Share	Nevada Share
Effluent Export Pipeline Project Segment 1	2006	\$9,270,000	\$6,952,500	\$2,147,500	\$170,000
State Parks System Improvements (Sand Harbor & Memorial Point)	2007	\$1,300,000	\$975,000	\$137,000	\$188,000
Effluent Export Pipeline Project Segment 3 – South	2007	\$3,250,000	\$2,437,500	\$812,500	–
Effluent Export Pipeline Project Segment 3 – North	2008	\$1,200,000	\$900,000	\$300,000	–
Effluent Export Pipeline Project Segments 1 & 5	2009	\$1,600,000	\$1,200,000	\$400,000	–
Spoooner Pumping Station Improvements Project	2012	\$3,500,000	\$2,625,000	\$875,000	–
Effluent Export Pipeline Phase II - Engineering	2013	\$475,000	\$356,250	\$118,750	–
	<b>Total</b>	<b>\$20,595,000</b>	<b>\$15,446,250</b>	<b>\$4,790,750</b>	<b>\$358,000</b>

# Export Pipeline – Segment 1





# Segment 1 Construction



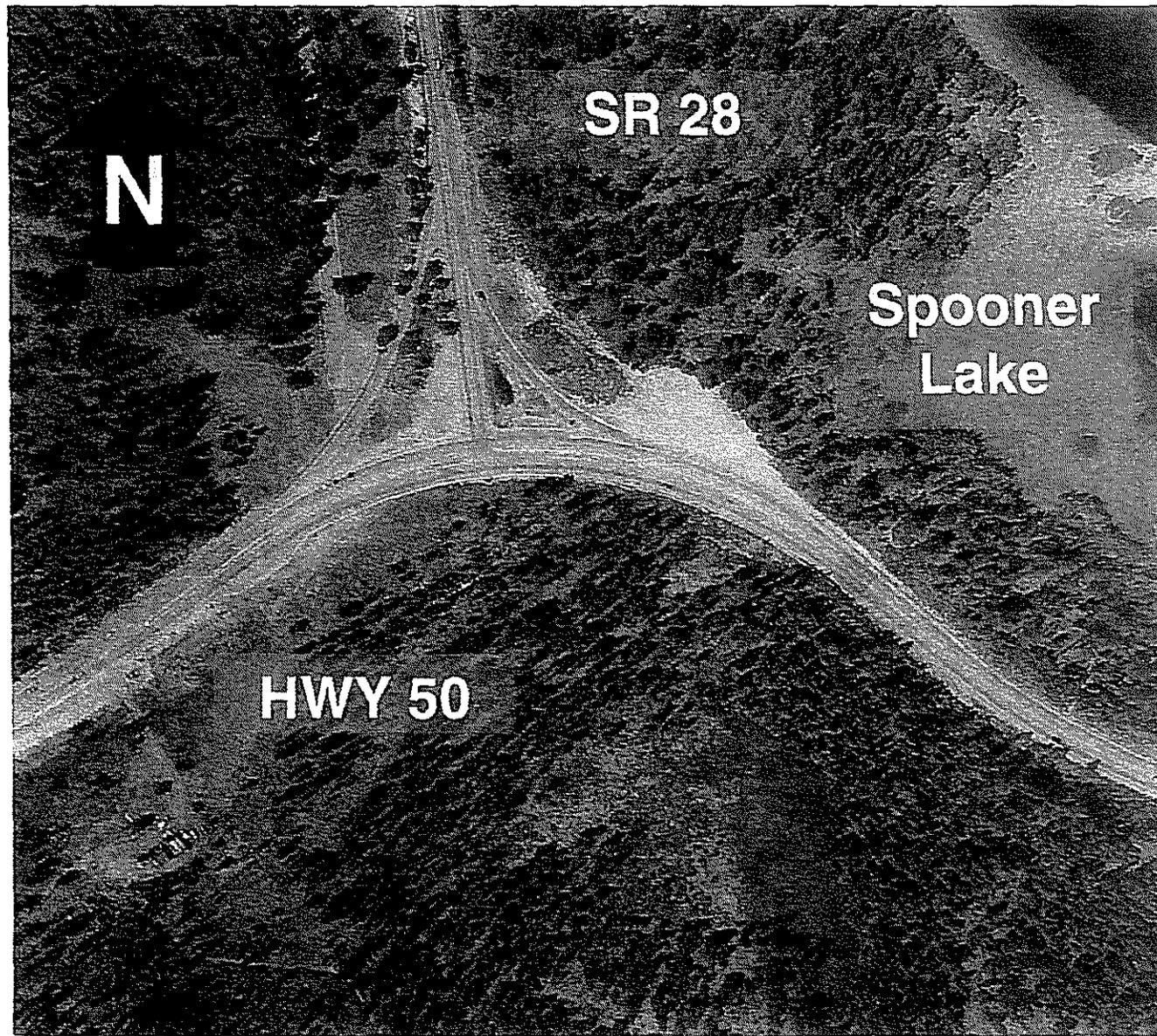
# Segment 1 Construction



# Segment 1 Construction



# Export Pipeline – Segment 3



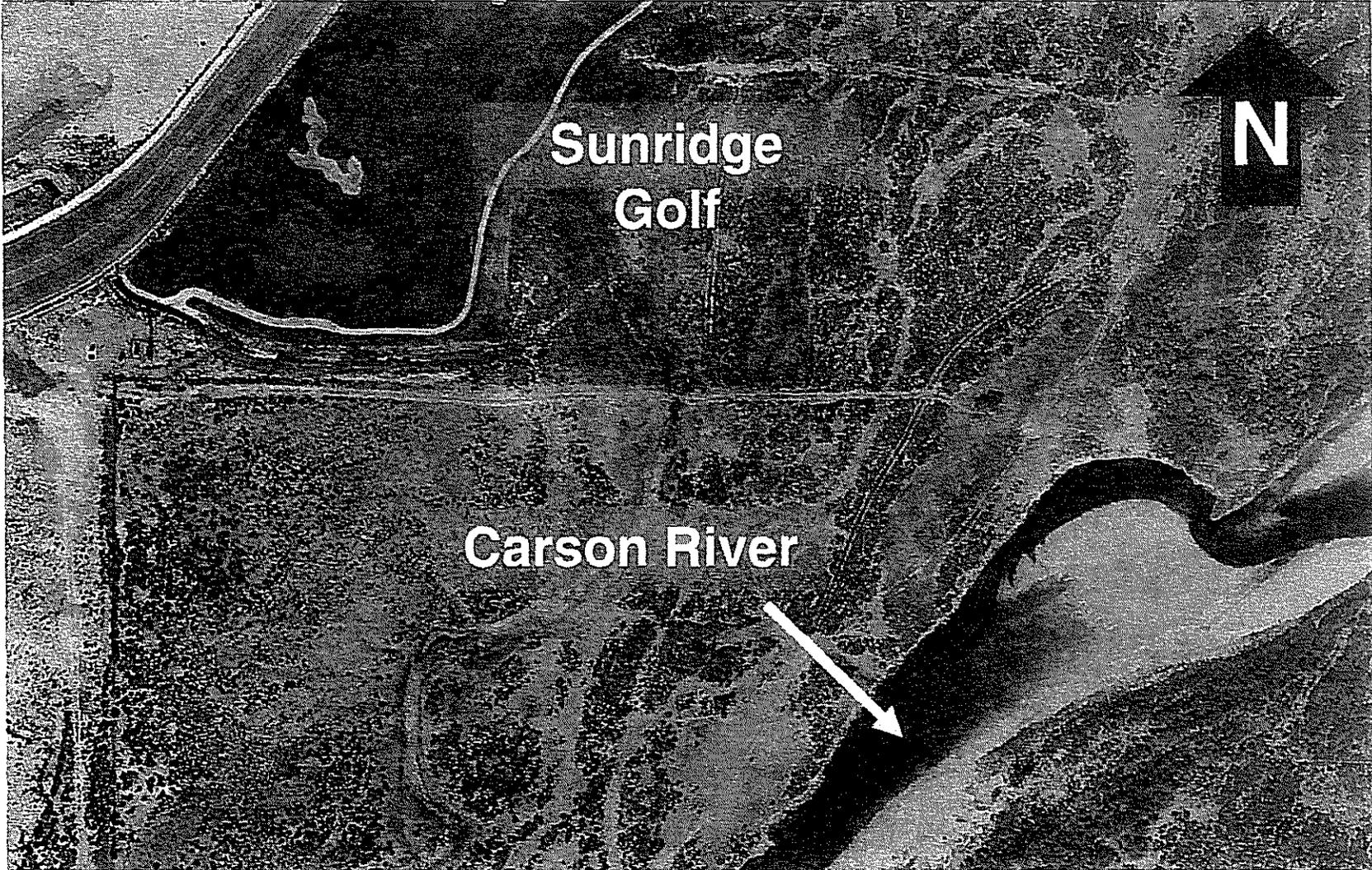
# Segment 3 Construction



# Segment 3 Construction



# Export Pipeline – Segment 5



# Segment 5 Construction





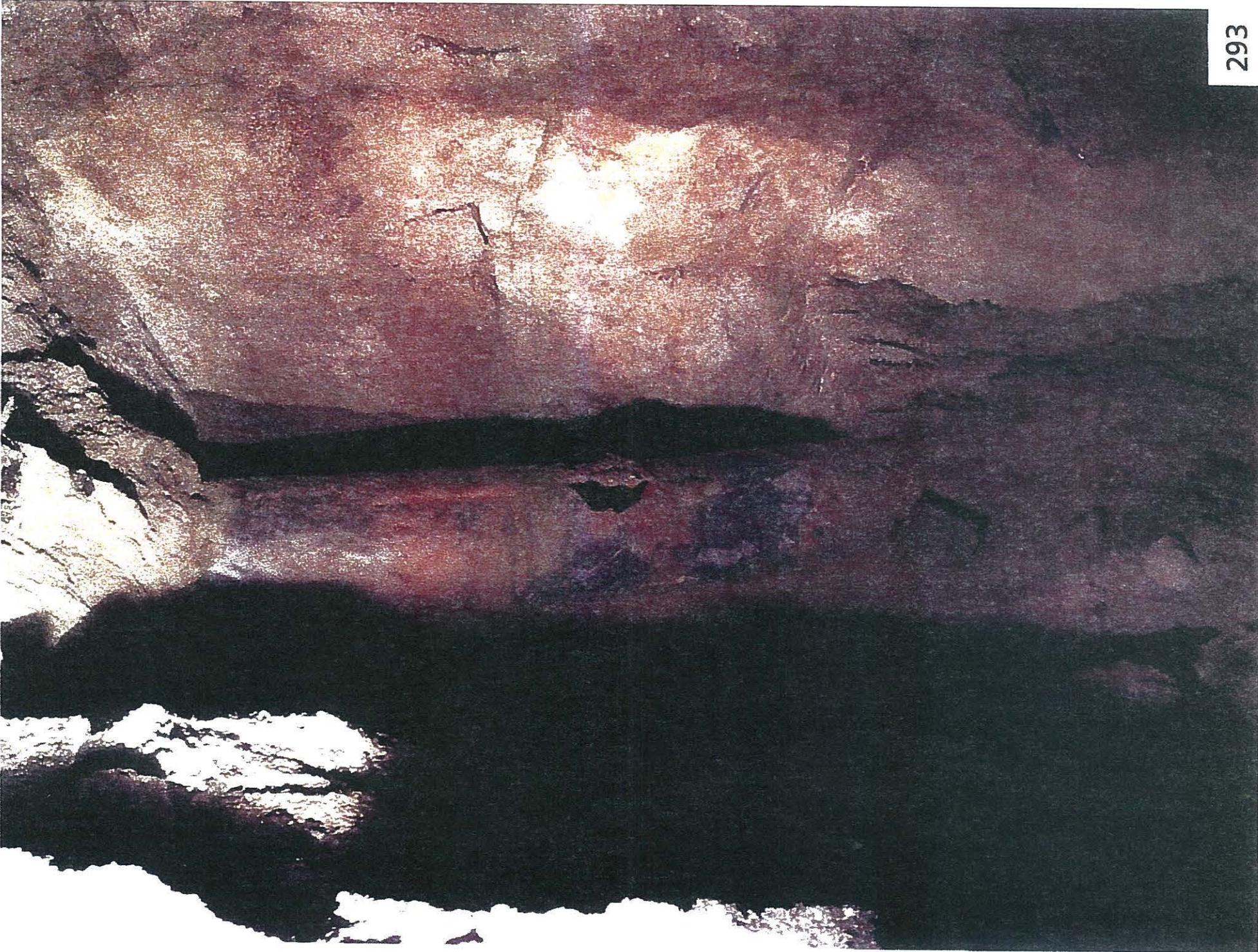
# Export Pipeline Replacement –Phase II

- Segment 2
  - 17,300-lf (~3.3-miles) of welded steel pipe
  - Cement mortar lined in three wall thicknesses
  - No leaks to date on this segment
- Segment 3
  - 13,700-lf (~2.6-miles) of push-on steel pipe remains
  - Cement mortar lined
  - Numerous small leaks and two catastrophic failures
- Total project cost estimated at \$23M





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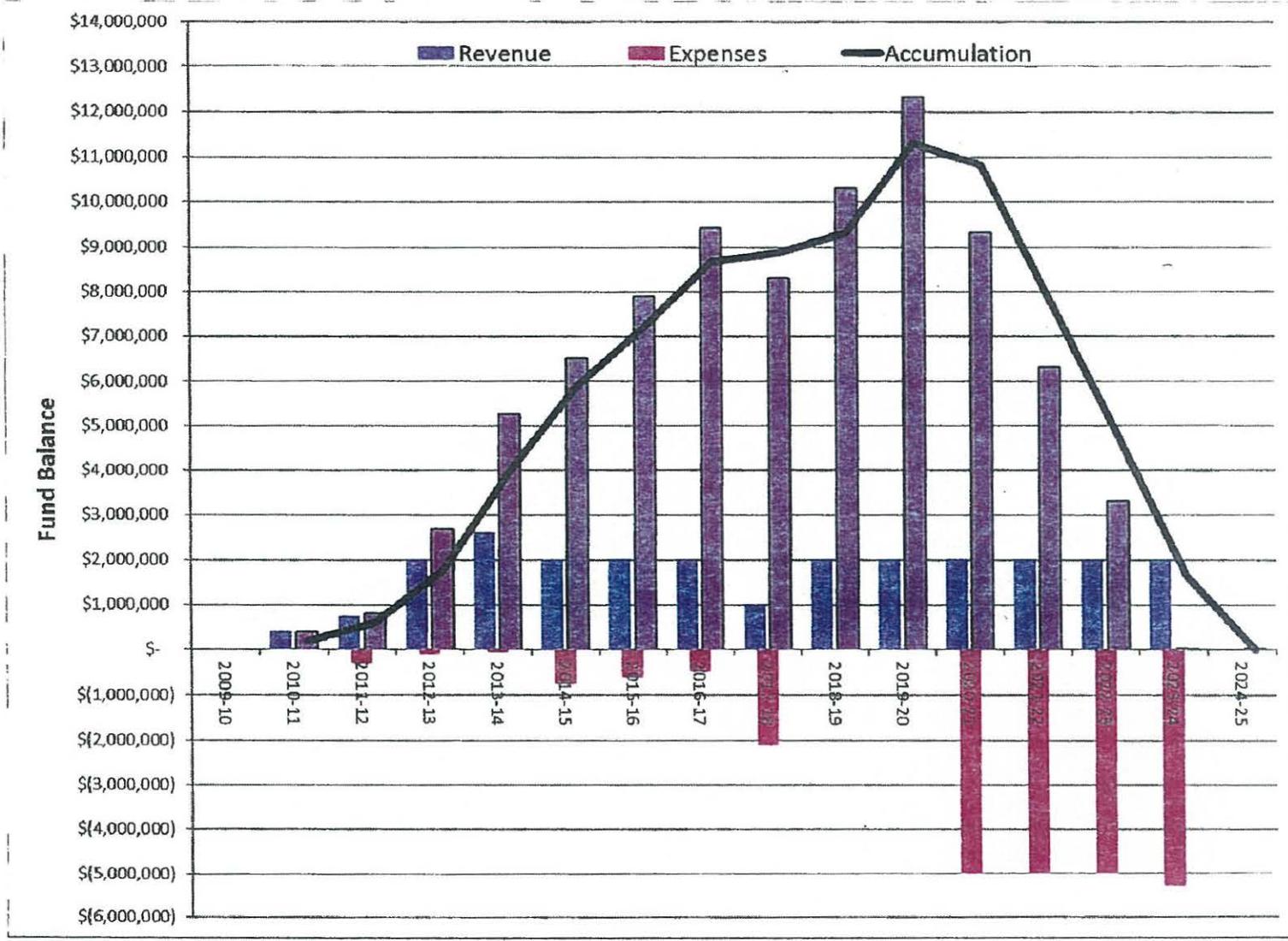


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# Export Project CIP Funding

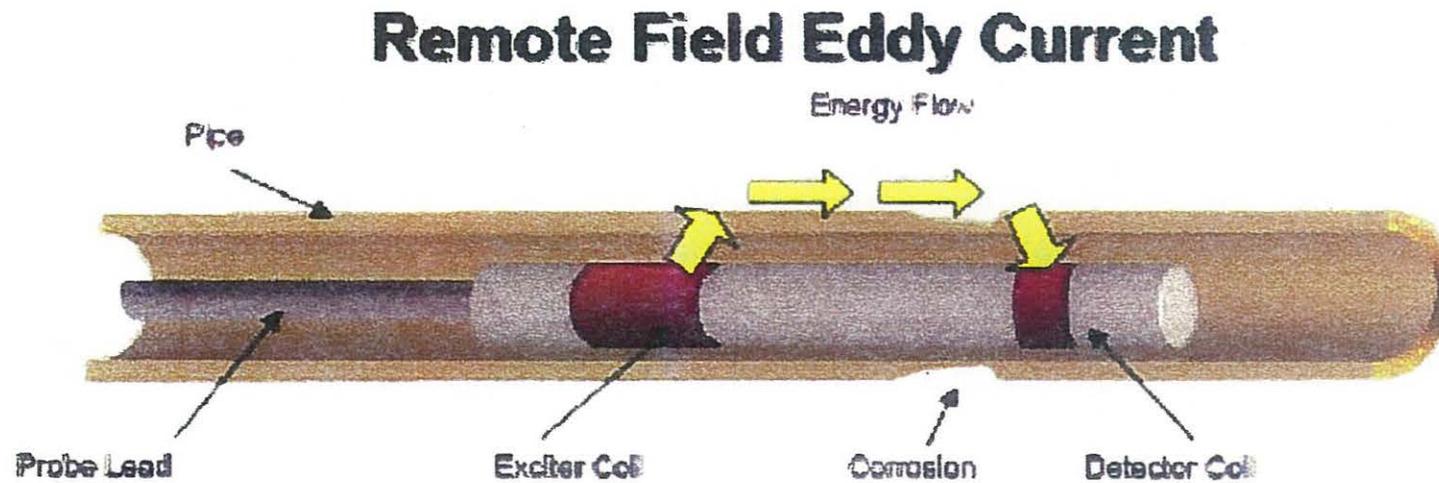


# Export Pipeline Replacement Cost Reduction Strategy

- **USACE Funding Support**
  - 50% – 75% potential funding support
  - Lobbying efforts in DC via Marcus Faust continue
  - Discussions with USACE Sacramento District continue
- **Bike Path Co-Location**
  - \$7M potential cost savings
  - Work with TTD continues
  - NEPA effort underway
- **Reduction in Pipeline Replacement**
  - \$2M - \$4M per mile of pipe
  - Based on outcome of condition assessment

# Condition Assessment

- Electromagnetic Remote Field Testing



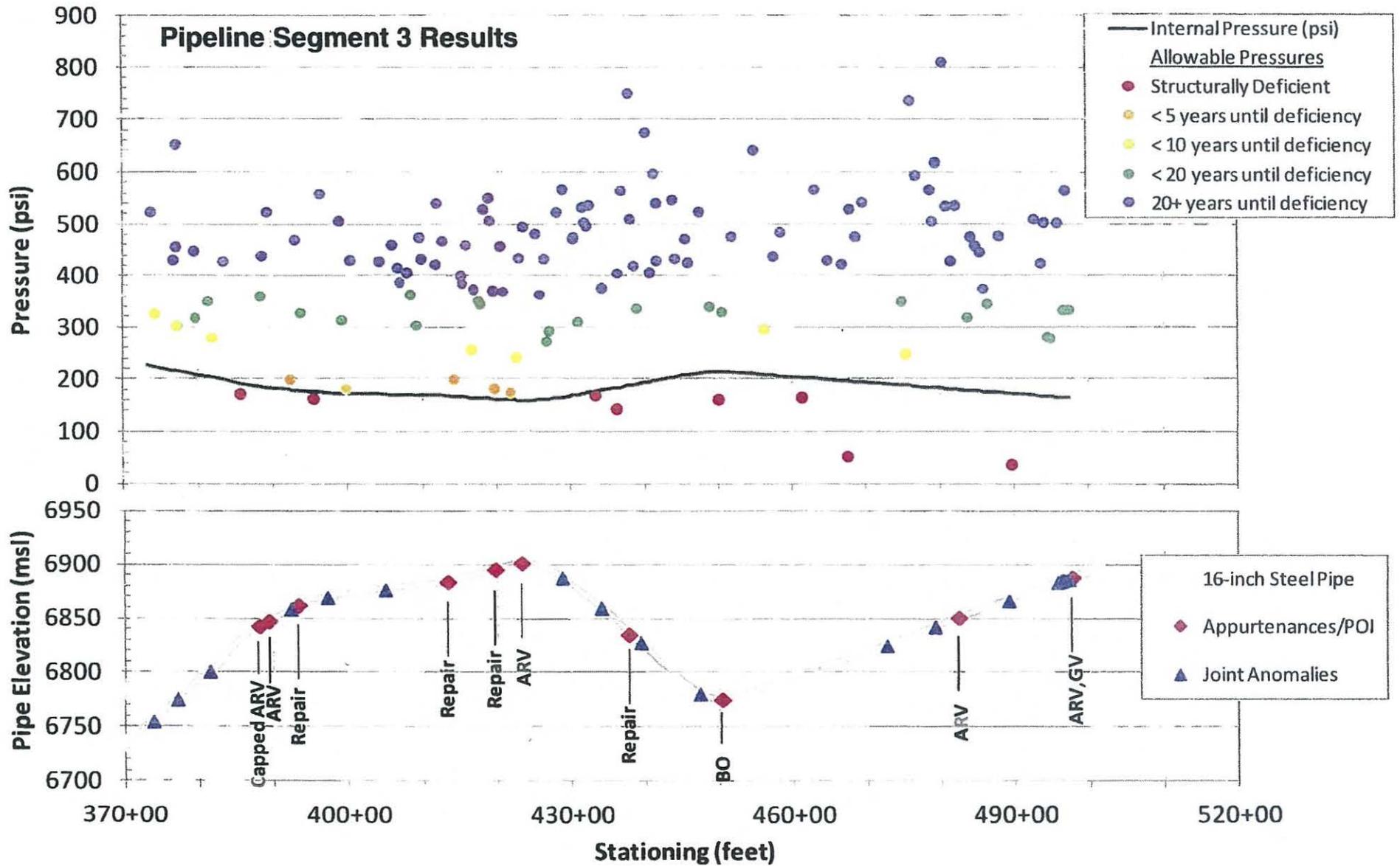
**Figure 1. Basic Setup of RFE probe in pipe.**

# Condition Assessment

- Pica Corp's SeeSnake

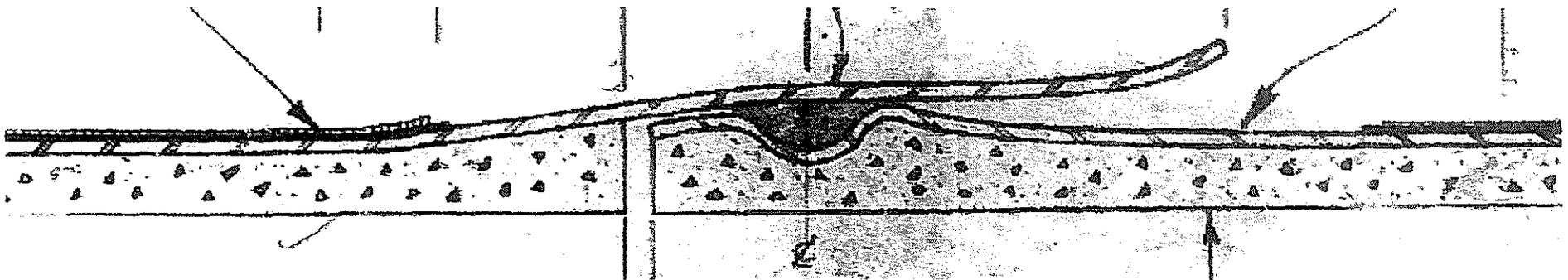


# Condition Assessment Results



# Condition Assessment Results

- No data for Segment 2
  - Additional data collection following repairs required
- Complete data set for Segment 3
- Identified 131 mid-body defects in Segment 3
  - 13 total defects identified for immediate repair
  - Segment 3 requires eventual replacement
- Identified 18 joint anomalies
  - Three joint anomalies to be removed for study during repairs



# Immediate Repairs

- 2014 NDEP Administrative Order
  - Issued following the second catastrophic pipeline failure in April 2014
  - Requires repair of critical deficiencies identified by condition assessment
  
- Proposed Interlocal Agreement
  - Repairs will be completed under NDOT's SR-28 Pathway Project by Granite Construction (NDOT's Contractor)
  - Replaces 13 pipeline sections over 2.5-miles
    - 80 to 100-lf replacement sections (1,080-lf total)
    - Retrieves five 30-lf sections for additional study
  - Work completed in approximately 4-weeks
    - 24-hr work shifts Monday thru Friday
  - Coordinates work of both projects in corridor to reduce impact to public

# Project Construction Budget

Description	Amount
Construction Contract	\$1,002,600
Construction Contingency @ 15%	\$150,000
Special Inspection & Materials Testing	\$30,000
Construction Inspection Services	\$65,000
Engineering Services and District Staff Time	\$75,000
<b>Estimated Project Total</b>	<b>\$1,322,600</b>



# Recommendation

That the Board of Trustees moves to:

- 1) Authorize an Interlocal Agreement with the State of Nevada Department of Transportation, in the amount of \$1,002,600, for the construction of the effluent export pipeline repairs as part of the State Route 28 Shared Use Pathway Project.
- 2) Authorize Staff to sign the agreement based on a review by General Counsel and Staff.
- 3) Authorize Staff to approve change orders to the construction contract for additional work not anticipated at this time of up to 15% of the project bid – \$150,000.
- 4) Authorize Staff to enter into an Additional Services Addendum with Tri Sage Consulting totaling \$65,000 for construction inspection services during completion of the project.

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Tim Callicrate  
Board Chairman

**SUBJECT:** Reconsider action taken on January 22, 2020 relative to receiving, discussion and direction to Staff to file the June 30, 2019 Comprehensive Annual Financial Report including an Unmodified Report by the District's Auditor, as required by NRS 354.624, and in accordance with IVGID Board Policy 3.1.0., 0.9 Reconsideration

**DATE:** January 23, 2020

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to reconsider the action taken on January 22, 2020 relative to receiving, discussion and direction to Staff to file the June 30, 2019 Comprehensive Annual Financial Report including an Unmodified Report by the District's Auditor, as required by NRS 354.624, and in accordance with IVGID Board Policy 3.1.0., 0.9 Reconsideration.

### **II. COMMENT**

This request is in accordance with IVGID Board Policy 3.1.0, 0.9 Reconsideration – the policy is attached.



## **Conduct Meetings of the Board of Trustees Policy 3.1.0**

**POLICY.** The Board of Trustees will fix the time and place of the regular meeting of the Board of Trustees of the Incline Village General Improvement District and provide the manner in which special meetings of said District may be called, designating an official mailing address, and establishing the order of business and rules for its proceedings for the Incline Village General Improvement District, Washoe County, State of Nevada.

- 0.1 Regular Meetings.** The regular meetings of the Board of Trustees of the Incline Village General Improvement District shall hereafter be held at the time and place set by the Board of Trustees.
- 0.2 Special Meetings.** Special meetings of the Board of Trustees shall be held upon call of the Chair of the Board or of at least two of the members thereof. Notice of all meetings shall be given in conformity with the provisions of Nevada Revised Statutes 241.020.
- 0.3 Meeting Place.** All meetings of the Board of Trustees shall be held within the District.
- 0.4 Holidays.** In the event that any day fixed for a regular meeting of the Board shall fall upon a holiday, that meeting shall be rescheduled by the Board.
- 0.5 Item(s) of Business.** The item(s) of business at the regular meetings of said Board may include, but are not limited to:
  - Roll call of Trustees
  - Initial Public Comment
  - Public Hearings (if any)
  - Approval of minutes
  - Approval of agenda
  - Approval of Bills
  - Reports
  - Consent Calendar\*
  - General Business\*
  - Final Public Comment
  - Adjournment



## Conduct Meetings of the Board of Trustees Policy 3.1.0

\*UNLESS OTHERWISE APPROVED BY The Board Chair, no matter shall be heard, or acted upon unless all relevant materials have been included in the Board of Trustees Meeting Packet.

### 0.6 Rules of Proceedings.

- a. Public Meetings. All meetings of the Board shall be in accordance with Nevada Revised Statutes 241, the Nevada Open Meeting Law.
- b. Quorum. A majority of the Board of Trustees present in person or by remote communication shall constitute a quorum for the transaction of business. In no event shall any matter be approved without the affirmative vote of three trustees.
- c. Method of Action. The Board of Trustees shall act only by motion which, to become effective, shall be adopted by the affirmative vote of at least a majority of its members present in public meeting, unless otherwise provided by statutes. In the event of only three members present, the method of action must be unanimous.
- d. Recording Vote. Except where action shall be taken by the unanimous vote of all Trustees present and voting, the yes/ayes and no/nays shall be taken on all actions had and entered upon the minutes. All Trustees shall have the equal right to vote, make and second motions. If the vote for/against any item is not unanimous, the Chair may ask the Clerk to conduct a roll call vote.
- e. Ordinances. The enacting clause of all ordinances passed by the Board shall include the word "ordinance" and be consecutively numbered. All actions to pass or revise an ordinance shall be attested by the Secretary.



## Conduct Meetings of the Board of Trustees Policy 3.1.0

- f. Contracts. Contracts entered into by the District that are required to be advertised under Nevada Revised Statutes 332 and/or 338 must be approved by the Board of Trustees. All documents approved or awarded by the Board shall be signed in the name of the District by the Chair and countersigned by the Secretary, unless authorization to sign is given to another person(s) by the Board.

Contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees.

Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and executed by the General Manager or his designee of the District, if it is for an amount less than the advertising threshold of Nevada Revised Statute 332. Contracts over the threshold of NRS 332.115 must be approved by the Board of Trustees.

- g. Claims. The General Manager and General Counsel, and their designees, are authorized to negotiate on behalf of IVGID, the settlement of all property damage, personal injury, or liability claims, unless otherwise ordered by the Board of Trustees. Final settlement of such claims may be authorized by the General Manager, provided the amount attributed to IVGID is less than the amount that must be approved by the Board for amounts per occurrence, including all sources of payment (insurance, risk reserve, operating funds, or working capital). For claims that exceed the amount, those must be approved by the Board, the General Manager may authorize and accept a tentative settlement, which shall not be final and binding upon IVGID, unless and until approved by the Board of Trustees.
- h. Litigation. The General Manager must obtain Board of Trustees authorization, at a public meeting, to initiate any lawsuit.



## Conduct Meetings of the Board of Trustees Policy 3.1.0

- 0.7. Robert's Rules.** Unless contrary to this rule, such meetings shall be substantially conducted in conformity with Robert's Rules of Order unless those provisions conflict with Chapter 241 of the NRS, in which case, the statutes will prevail.
- 0.8. Agenda Preparation.** The Board Chair, in cooperation with the General Manager, is responsible for preparing the agenda for each meeting. The Chair will place on the Agenda any item requested by a fellow Trustee. The General Manager shall schedule for consideration by the Board any matter requested to be placed on the agenda by any three Trustees. Unless directed otherwise by the Board, the General Manager may delay consideration of any item. In any conflict between the provisions of this paragraph and that of paragraph 0.9., paragraph 0.9. shall govern.
- 0.9. Reconsideration.** Reversal, or substantial modification, of any item by the Board of Trustees within six months of the meeting date at which the action was taken, shall only be considered as follows: the General Manager may request reconsideration of any action of the Board, and place reconsideration of the action before the Board, if the General Manager determines that the action compromises the efficiency of operations or otherwise impairs the effective management of the District. Additionally, a Board action may also be scheduled for reconsideration if at least three Trustees request same. Once placed on the agenda under the procedure established herein, the Board may rescind, modify, reaffirm, or take no action on the item; in the same manner it would take action on any other general item of business.
- 0.10. Public Participation.** Comments shall be solicited from the public during two comment periods, one at the start of the meeting and one prior to adjournment. The time limit shall be three (3) minutes for each person per comment period. No yielding of time shall be allowed.
- 0.11 Officers of the Board.** The officers of the Board shall be elected as provided by Nevada Revised Statutes 318.085 and shall consist of a Chair of the Board, Vice Chair of the Board, Treasurer, and Secretary.



## Conduct Meetings of the Board of Trustees Policy 3.1.0

The term of office shall be for one (1) year or until a reorganization of the Board is required.

- 0.12 Authorization to Sign Checks.** The General Manager and the officers of the Board are hereby authorized to sign checks drawn on the various bank accounts of the District. It shall be required that at least two (2) signatures are affixed to any check drawn on such accounts.
- 0.13 Facsimile Signatures.** The banks with which the District does business are authorized and directed to honor checks drawn on the various bank accounts of the District, when bearing any two facsimile signatures of the officers of the Board and General Manager of the District, after their manual signatures are filed with the Secretary of State, in conformance with Nevada Revised Statutes 351.030.
- 0.14 Reports.** The Board Meeting agenda may include items under Reports which are intended to inform the Board and/or the public. These reports are not actionable items rather informational in nature and substance. Should an action be required the matter shall be presented as a General Business Item.
- 0.15 Consent Calendar.** In cooperation with the Chair, the General Manager may schedule matters for consideration on a Consent Calendar. The Consent Calendar may not include changes to user rates or taxes, adoption or amendment of ordinances, or any other action which is subject to a public hearing. Each consent item shall be separately listed on the agenda, under the heading of "Consent Calendar." A memorandum will be included in the packet materials for each Consent Calendar item. The memorandum should include the justification as a consent item in the Background Section.

Any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting.



## **Conduct Meetings of the Board of Trustees Policy 3.1.0**

A unanimous affirmative vote shall be recorded as a favorable motion and approval of each individual item included on the Consent Calendar.

**0.16 Advisory Committees.** SECTION OMITTED

**0.17 Legislative Matters.** The General Manager may from time to time propose positions on legislative issues, which positions shall be reviewed and approved by the Board at its regular meeting. In the event a position on a legislative issue must be established prior to the next regular Board meeting, the General Manager is hereby authorized to adopt a position on IVGID's behalf.

**0.18 Conflict Resolution.** In the event that the provisions of Policy 3.1.0 conflict with any other Policy Provisions, this section shall prevail.



## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Tim Callicrate  
Board Chairman

**SUBJECT:** Receive and direct Staff to file the June 30, 2019 Comprehensive Annual Financial Report including an Unmodified Report by the District's Auditor, as required by NRS 354.624.

**DATE:** January 23, 2020

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### **I. RECOMMENDATION**

The recommendation is to reconsider the action of January 22, 2020 and possibly note the receipt of the audit report and approve filing it with the State of Nevada by January 31, 2020 as required by NRS 354.624.

The Board of Trustees voted two for and three against on January 22, 2020 for receipt and filing of the financial audit conducted as of June 30, 2019. Staff had recommended, with concurrence by the District's Audit Committee from December 11, 2019, that the Board of Trustees note receipt of the June 30, 2019 unmodified audit report, and direct Staff to file the Comprehensive Annual Financial Report (CAFR) with the State of Nevada and make it generally available for public use.

### **II. BACKGROUND**

As required by Nevada Revised Statute 354.624, an annual audit will be concluded and the audit report submitted not later than five months after the close of the fiscal year (June 30). The report was received November 18. The 2019 Audit Committee has monitored progress to date and met December 11 to receive the report under the State's guidance to do so no later than thirty days from that submission. The Board of Trustees also met December 11, and had an agenda item for the report, but choose to table it to allow the full Board to act at a later date. Staff requested an extension from the Department of Taxation to accommodate a January 15, 2020 meeting. The actual date of the meeting was January 22, 2020.

The District has engaged the audit firm of Eide Bailly LLP to conduct a financial audit in accordance with generally accepted auditing standards in the United States. This is required under NRS 354.624. The District's auditor have completed

their audit of the District's 2018-2019 financial report and have issued an unmodified report. An unmodified report (clean opinion) is the best audit report that can be issued and states that the financial statements are fairly presented in conformity with generally accepted accounting principles.

Eide Bailly LLP's scope of work for 2018-19 included various responsibilities in connection with the audit requirement. The Audit Committee met with Eide Bailly, LLP on December 11 to receive their report on those responsibilities. The CAFR includes a Report on Compliance and Internal Control in relation to the audit of the basic financial statements. Our auditors also reported no material weaknesses in our internal controls over financial reporting.

As part of the Board discussion, and following the vote on January 22, 2020, Board Chairman Callicrate agreed to discuss this matter with the State of Nevada Department of Taxation. This item was placed on the agenda for reconsideration to allow posting for the January 29, 2020 meeting and to still possibly file within the extension granted to January 31, 2020.

### **III. COMMENT**

Staff recognizes there is interest in having the District's accounting reviewed at a level beyond what is covered by the Comprehensive Annual Financial Report. The provisions of NRS 354.624 do not preclude other scopes of work, but does require the District to perform the prescribed financial audit. By receiving and filing the report, the District is complying with the law. If a report is not filed, the State can order a financial audit be completed and bill the District for the work. The suggested action allows the District to comply with the legal requirements. At the December 11 meeting, Staff and the Board began a discussion about other types of work that could be conducted for internal controls. Such a review can be performed as directed by the Board, but it would not meet the requirements of NRS 354.624. This discussion was continued at the January 22, 2020 meeting.

Once the Board has directed the report be filed, it will be assembled in a final bound or electronic form and then will be distributed to a number of Local, State and Federal agencies, as well as bond consultants, banks, the Municipal Securities Rulemaking Board and the general public. The audit report will also be posted on the District's Financial Transparency website. This will be accomplished as soon as possible to meet the extension granted by the State of Nevada.

The CAFR is not included as an attachment as it has been published twice before and is available on our website or upon request to the District Clerk.

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Tim Callicrate  
Board Chairman

**SUBJECT:** Review, discuss and possible make a motion to approve a letter with attachments, a draft of which will be available at the meeting on January 29, 2020, addressed to the State of Nevada, Department of Taxation with the subject being receipt of the Incline Village General Improvement District Comprehensive Annual Financial Report; Trustee(s) Comments

**DATE:** January 23, 2020

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to approve a letter with attachments, a draft of which will be available at the meeting on January 29, 2020, to the State of Nevada, Department of Taxation with the subject being receipt of the Incline Village General Improvement District Comprehensive Annual Financial Report; Trustee(s) Comments.

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Tim Callicrate  
Board Chairman

**SUBJECT:** Review, discuss and possible make a motion to approve not to exceed thirty thousand dollars (\$30,000.00), from the General Fund, so that the Interim District General Manager can issue a contract to an unspecified legal firm to conduct a very limited scope of work

**DATE:** January 23, 2020

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to approve not to exceed thirty thousand dollars (\$30,000.00), from the General Fund, so that the Interim District General Manager can issue a contract to an unspecified legal firm to conduct a very limited scope of work.

### **II. SCOPE OF WORK**

The scope of work is two tasks as follows:

- a. Review the current Hutchison & Steffen contract (attached hereto) to provide an opinion on the contract contents.
- b. Review the status of the Mark E. Smith v. IVGID (Case No. CV ) to provide an opinion on the current status of the case and provide opinion(s) on potential settlement options.

### **III. COMMENTS**

This work will be directly supervised by the IVGID Board of Trustees Chairman and the Interim General Manager. The District Clerk will provide administrative assistance as necessary.

DATE	DAY OF THE WEEK	TIME	LOCATION	MEETING	ITEMS SLATED FOR CONSIDERATION
				2020	
02/12	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Set Budget and Rec Roll Hearing date as May 21, 2020 Utility Rate Study presentation Set Utility Rate public hearing date Guest Access Ticket GM Report Appointment of District General Manager Redline version of Ordinance 7 with changes incorporated from 01222020
02/26	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Board of Trustees review of Community Programming (cost recovery pyramid, service levels, and programs provided) Overall budget preview and strategy introduction Accept Tennis Final Design
03/11	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Overview of Operating Budget including Fixed & Scalability and Sources & Uses Approval of Resident Ski Passes (Consent Calendar) Designation of District's Auditor (see 12/11 memorandums)
03/18	Wednesday	TBD		CIP Tour	<i>Need to move this – determine who wants it; if it is needed; can't happen on 3/18 due to vacation</i>
03/25	Wednesday	6 p.m.	Boardroom	Regular Board Meeting	Review of 2020/2021 Capital Improvement Proposed Budget and Funding
04/08	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Consider and approve "tentative" budget filing and preliminary Rec Roll Utility Rates (Ordinances 2 and 4) Public Hearing and Approval of Revised Ordinances Contract Award for Ski Rental Equipment (Consent Calendar)
04/29	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
05/13	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
05/27	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Public Hearing on final proposed Rec Roll and 2020/2021 Fiscal Year Budget*
06/10	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
06/24	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
07/08	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
07/29	Wednesday	6 p.m.	Chateau	Regular Board Meeting	Review and approve District Indebtedness Report including the Five Year Capital Improvement Project Summary and State Forms
08/12	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
08/26	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
09/09	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
09/30	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
10/14	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
10/28	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
11/11	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
11/25	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
12/09	Wednesday	6 p.m.	Chateau	Regular Board Meeting	
12/30	Wednesday	6 p.m.	Chateau	Regular Board Meeting	

<i>Items sitting in the parking lot (to be discussed but (a) not yet scheduled for a specific Regular Board Meeting) or (b) a future Board not on this calendar</i>
RFID Picture Passes – Item for next Strategic Plan or three years from now – software not available nor is infrastructure/hardware
TRPA EIS Contract at Diamond Peak
WCSD Joint Agreement
Split Ordinance (allow 45 days ahead of action)

\*Budget approval is required after the third Monday however whatever date is selected, a 10-day notice must be given. Must accomplished no later than June 1, 2020.