

PENNINGTON COUNTY, SOUTH DAKOTA
Grant Number: 2023-003

Sub-Recipient Agreement
Between

Rapid Valley Sanitary District

Pennington County,

Address

4611 Teak Dr.
Rapid City S.D. 57703

130 Kansas City Street
Rapid City, SD 57701

Referred to as Sub-Recipient

Referred to as County

The County and Sub-Recipient hereby enter into this Agreement (hereinafter the "Agreement") for a grant award of Federal financial assistance to Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION

- a. Sub-Recipient's name: Rapid Valley Sanitary District
- b. Sub-Recipient's DUNS number and unique entity identifier: **L1C9JGRALZ95**
(unique entity identifier number)
- c. Federal Award Identification Number (FAIN): FAIN# **SLFRP1428**
- d. Federal Award Date: Date **County Awarded subrecipient funds on April 27,2022**
- e. Sub-award Period of Performance: Execution of Agreement through the 31 day of December 2026
- f. Amount of federal funds obligated to the Sub-Recipient by this Agreement:
\$5,349,070.00
- g. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows:

The state and local fiscal recovery funds program authorized by the American Rescue Plan Act provides funding to support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control; replace lost

revenue for eligible state, local, territorial, and tribal governments to strengthen support for vital public services and help retain jobs; support immediate economic stabilization for households and businesses; to make necessary investments in water, sewer, and broadband infrastructure; and cover the cost of other eligible activities. Activities to be performed: Treasury will make direct payments to states (defined to include the District of Columbia), U.S. Territories (defined to include, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), tribes, metropolitan cities, counties, consolidated governments, and non-entitlement units of local government (through states)(collectively "eligible entities") to use the funding for the eligible purposes outlined in the program statute, Treasury's implementing regulations, and guidance.

End goal/expected outcomes: The state and local fiscal recovery funds program funding will: (1) Provide the necessary assistance for households, small businesses, nonprofits, and impacted industries, such as tourism, travel, and hospitality to respond to the COVID-19 public health emergency or its negative impacts; (2) be used to cover premium pay to eligible workers of the governments performing essential work during the COVID-19 pandemic or used to provide grants to eligible employers that have eligible workers who perform essential work; (3) provide government services, to the extent COVID-19 caused a reduction of revenues collected in the most recent full fiscal year of the government; or (4) make the necessary investments in water, sewer, or broadband infrastructure. Intended beneficiaries: Essential workers, households, small businesses, nonprofits, the governments of the eligible entities, the general public, etc. **Subrecipient activities: Subrecipient activities are constructing potable water mains, water storage reservoirs and a Madison well to provide potable water for the general public.**

- h. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: U.S. Treasury, passed through Pennington County, South Dakota
- i. Assistance Listing No(s) and Name(s): 21.027 Coronavirus State and Local Fiscal Recovery Funds
- j. Is the grant award for research and development (R&D)? YES ___ NO X
- k. Indirect Cost Rate for federal award: 0.00%

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This Agreement shall be effective upon execution by all parties and will end on the 31 day of December 2026, unless sooner terminated pursuant to the terms hereof. The timely and expeditious use of grant funds is necessary assure availability of American Rescue Plan Act of 2021 funds for the project. To assure the funds will be expended prior to federal deadline requirements the project milestone deadlines in sections (a) though (d) of this section are hereby incorporated into the period of performance.

- a. Submit complete plans and specifications for the Project to the State and Pennington County on or before March 1, 2024;
- b. Execute construction contracts on or before December 31, 2024;
- c. Disbursements of 50 percent or more of the grant funds provided for this Project must be requested for reimbursement with qualifying eligible costs on or before June 1, 2026;
- d. Disbursements of 90 percent or more of the grant funds provided for this Project must be requested for reimbursement with qualifying eligible costs on or before October 1, 2026; and
- e. Final reimbursement request from Sub-Recipient must be submitted to Pennington County on or before December 1, 2026.

If the Sub-Recipient fails to meet the deadlines set forth in this section all undisbursed grant funds may be de-obligated and reverted back to Pennington County for reallocation to other eligible projects at the sole discretion of the County. In the event that deadlines are met for only a portion of the Project, only that portion of the Project shall be eligible for grant funds. The grant amount will be adjusted based on the amount of the contract or contracts awarded in compliance with the deadlines in proportion to total construction cost for the Project as identified in the request made to the Pennington County Board of Commissioners on April 19, 2022 and awarded on April 27, 2022 (herein after known as "the application").

No action or motion will be required by the County to allow for the reduction of grant funds as set forth herein. The County will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all County ARPA grant funds.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

The Sub-Recipient agrees to use the funds to undertake a Water System Expansion project, which project shall be constructed in accordance with the workplan attached hereto as Exhibit A, and by this reference made part hereof. No expenditures may be incurred outside of the attached workplan without prior approval by the County or its designated agent. Eligible costs incurred prior to the effective grant award date are eligible for reimbursement, if incurred after March 3, 2021.

The County and the Sub-Recipient agree that all obligations under this Agreement are conditioned upon satisfactory compliance with the requirements outlined in the workplan which must be performed in compliance with the federal American Rescue Plan Act of 2021 (ARPA) and the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached hereto as Exhibit B and by this reference made a part hereof.

4. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of a Water System Expansion project and payment will be made by the County after the County reviews eligible project costs in a manner as described in section 9.

Federal Amount provided by the County is \$5,349,070.00

The County's ARPA funds will be expended prior to expending the State of South Dakota's ARPA grant award to the Sub Recipient.

Funds will be distributed on a reimbursement basis only and should be completed in accordance with the County's monthly voucher request/payment process. Once bids open for all construction contracts included in the Project, grant funds may be adjusted by the County if the total estimated project costs are more than five (5) percent less than the original estimate.

Sub-recipient is aware of the procurement requirements set forth in the ARPA, including those requirements for engineering procurement. In the event Sub-recipient has not complied with those engineering procurement requirements as referenced in ARPA and described more fully in 2 CFR 200.317 through 200.327, the County reserves the right to de-obligate the ARPA grant funds. Sub-recipient further understands and agrees that Sub-recipient's failure to comply with the engineering procurement requirements as set forth herein would make ARPA grant funds unavailable for the engineering portion of the project, and therefore accepts the other program funds for such engineering procurement and in lieu of any additional demands against the state for grant funds of any type.

No action or motion will be required by the County Board to allow for the reduction of grant funds as set forth herein. The County will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all County ARPA grant funds.

5. RISK ASSESSMENTS, MONITORING AND REMEDIES

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the County to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the County, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews.

The sub-recipient agrees to provide the County with at least semi-annual project updates and status updates of the project in respects to completion goals.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the County has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the County. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is commenced or anticipated before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the County. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the County, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) Records are submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the County) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) Records are not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the County) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The County, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. County Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the County, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the County are subject to site review and audit as prescribed and carried out by the County. Any over payment under this Agreement shall be returned to the County within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends \$750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
500 East Capitol
Pierre, SD 57501-5070

If the Sub-Recipient expends less than \$750,000 during any Sub-Recipient fiscal year, the State or County may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the 9 months following end of the fiscal year being audited. RVSD should also provide a copy of their annual audit to the County each fiscal year.

For either an entity-wide, independent financial audit, or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the County or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the County. The County may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the County.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the County. The State, County and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

- a. A conflict of interest policy is enforced within the recipient's or Sub-Recipient's organization;
- b. The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-Recipient's website;
- c. An effective internal control system is employed by the recipient's or Sub-Recipient's organization; and
- d. If applicable, the recipient or Sub-Recipient is in compliance with the federal Single Audit Act, in compliance with SDCL § 4-11-2.1, and audits are displayed on the recipient's or Sub-Recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the County and resolved to their satisfaction prior to signing this Agreement.

If Sub-recipient is a non-state agency they agree to disclose to the County, in writing, any conflicts of interest that exist under the Sub-recipient's conflict of interest policy. The County will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the Pennington County website.

In the event of a significant change in the conflict of interest policy, Sub-Recipient agrees to provide immediate notice of such change to the County, and provide a copy of the new conflict of interest policy. Sub-Recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the County.

9. CLOSEOUT

- a. Grant proceeds will be disbursed on a reimbursement basis upon receipt of sub-recipient payment requests and invoices to support such requests. Such proceeds may be disbursed throughout the project and after determining that the requested payment and invoices are for costs that meet the eligibility outlined in the workplan.
- b. The Sub-Recipient will designate, in writing, an official to certify on Sub-Recipient's behalf that the request submitted is correct and is a valid expenditure under the workplan attached hereto as Exhibit A.

- c. Sub-Recipient will submit a signed request for disbursement along with invoices to support the request. The request for disbursement will be submitted to such person or persons as the County may designate for approval.
- d. The County reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service for which the payment is sought. No funds will be disbursed until all fees owed by the Sub-Recipient are paid.
- e. All requests for disbursement for eligible costs under this Agreement not presented within ninety (90) days after the completion of the term of this Agreement or on or before December 1, 2026, are barred from payment.

B. STANDARD CLAUSES

1. ASSURANCE REQUIREMENTS:

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

2. COST PRINCIPLES:

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements) and 2 CFR Part 1500.

3. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this Agreement may be terminated by the County for cause at any time, with or without notice and the Sub-Recipient shall be obligated to reimburse the County for any funds theretofore improperly expended by or for the benefit of the Sub-Recipient, or any part thereof, and if not promptly paid, the County may pursue all rights and remedies under any applicable laws or regulations. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

4. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Pennington County Board of Commission for this purpose. If for any reason the Board of Commission fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the County. Termination for any of these reasons is not a default by the County nor does it give rise to a claim against the County.

5. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the County. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

6. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Seventh Judicial Circuit, Pennington County, South Dakota.

7. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

8. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

9. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Pennington County Auditor, and by the Sub-Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

10. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the County. The County reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the County, and to provide insurance coverage for the benefit of the County in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The County, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

11. COUNTY'S RIGHT TO REJECT

The County reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

12. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the County. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

13. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the County shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

14. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the County if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

1. TECHNICAL ASSISTANCE:

The County agrees to provide technical assistance regarding the County's rules, regulations and policies to the Sub Recipient and to assist in the correction of problem areas identified by the County's monitoring activities.

2. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

The funding of this **Water System Expansion** project in no way obligates the County to provide future funding for design or construction of additional improvements.

The Sub-Recipient will comply and will insure that the engineer and construction contractor selected to oversee the project complies, with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

Sub-Recipient will construct the Project, or cause it to be constructed, to final completion with reasonable diligence in accordance with the approved plans and specifications and the approved Project scope for the grant.

Sub-Recipient will ensure that construction administration and inspection is done by or under the supervision of a professional engineer or architect licensed and registered in the State of South Dakota to assure that the construction contractor's work conforms with the approved plans and specifications, and to furnish inspection and material testing reports, recommendations and such other information as the County may require. It is recognized and understood that the final responsibility of conformance with the plans and specifications is that of the construction contractor. The County has the right to monitor facility and design through on-site inspections from time to time.

3. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

As required by 2 CFR 200.216, recipients and sub-recipients, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, sub-recipients, and borrowers also may not use funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances: Obligating or expending funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

- 1) Procure or obtain, extend or renew a contract to procure or obtain;
- 2) Enter into a contract (or extend or renew a contract) to procure; or
- 3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

4. PROJECT REPRESENTATIONS AND COVENANTS.

The Sub-Recipient hereby represents and covenants that:

- a. all construction on the Project has complied and will comply with applicable federal, state and local laws, regulations, ordinances, and standards, including specifically federal requirements that all of the iron and steel products used in the Project are to be produced in the United States;
- b. all land surveys are conducted by a land surveyor registered in the State of South Dakota, and that the final plans and specifications are prepared under the supervision of and approved by a professional architect or engineer licensed and registered in the State of South Dakota.
- c. the Project is the type of project permitted to be financed under the applicable Program, the Act, and the laws governing the issuance of the Grant.

5. REDUCTION OF PROJECT COSTS

If all or a portion of the Project is canceled or scaled back and the costs of the Project are thereby reduced, or if for any reason the Sub-Recipient will not require the full amount of the Grant, the Sub-Recipient shall promptly notify the County and return the portion of the Grant which will not be needed.

No action or motion will be required by the Pennington County Board of Commissioners to allow for the reduction of grant funds as set forth herein. The County will prepare the grant amendment with the new reduced grant amount. The Sub-Recipient is required to sign the Amendment or risk forfeiture of all County ARPA grant funds.

6. COMPLIANCE WITH THE DAVIS-BACON ACT

- a. For projects in excess of \$10 million all transactions regarding this agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable;

- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor; and
- c. Contractors are required to pay wages not less than once a week.

7. HOLD HARMLESS

The Sub-Recipient agrees to hold harmless and indemnify Pennington County, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the County, its officers, agents or employees.

No part of the funding provided hereunder may be utilized for the payment of costs associated with litigation directly or indirectly involving the Sub-Recipient or Water System Expansion project. No member of the Sub-Recipient's governing body or other officers, agents, employees or immediate family members, shall receive direct personal benefit from this Agreement other than reasonable compensation for services rendered, expenses incurred in furtherance of the purposes herein authorized, or benefits received as a member of general public served by the Sub-Recipient.

8. FLOW DOWN

All "flow down" requirements are imposed on the subrecipient by the County to ensure that the award is used in accordance with Federal statutes, regulations and the terms of the award. The subrecipient is accountable to the County for compliance with Federal requirements. These requirements include, among others:

- a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
- b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the ARPA compliance provisions.
- c. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at 2 CFR 200.322. This provision does not apply to consulting services if the Sub-Recipient utilizes funds other than those provided by this Agreement to pay those costs.
- d. Subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

- e. Ensuring the Future is Made in All of America by All of America's Workers
Recipients must comply with the "Build America, Buy America" provisions of the Infrastructure investment and Jobs Act and E.O. 14005 which provide that, as appropriate and to the extent consistent with law, the recipient must use all practicable means within their authority under a federal award to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products.)

D. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.



Sub-Recipient Signature 7-20-23
Date



Chair 8-15-23
Date



Sara A Bender
8/1/2025

EXHIBIT A

Enter Project description from FRE Form information.

Project Title: RVSD Water System Expansion to provide water to Box Elder

Description:

Rapid Valley Sanitary District is proposing to expand their distribution system by constructing 12-inch water main from along Reservoir Road north of Homestead Street to Cheyenne Boulevard and constructing a new 2MG concrete storage tank to provide service to Box Elder. This project is an effort to spur regionalization, accommodate recent and expected growth, and address system needs and deficiencies in the area. Additional source water is also needed to complete the project, therefore RVSD is also proposing to drill a new well to address source needs. Total project cost is estimated at approximately \$12,027,660.

EXHIBIT B

U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

1. Use of Funds

- a. Sub-Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Sub-Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
- c. Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

2. Reporting

All recipients of federal funds must complete financial, performance, and compliance reporting and Sub-Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1.

3. Maintenance of and Access to Records

- a. Sub-Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Sub-Recipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Sub-Recipient for a period of three (3) years after all funds have been expended or returned to Treasury, whichever is later.

4. Pre-award Costs

Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

5. Conflicts of Interest

Sub-Recipient understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activity funded under this award. Sub-Recipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

6. Compliance with Applicable Law and Regulations.

- a. Sub-Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Sub-Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Sub-Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170 pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Sub-Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

- c. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity.) Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

7. Remedial Actions

In the event of Sub-Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.