

**MADISON COUNTY, MISSISSIPPI SUBRECIPIENT AGREEMENT FOR USE OF
ARPA FUNDS – MADISON COUNTY WASTEWATER AUTHORITY, WASTEWATER
IMPROVEMENTS**

THIS SUBRECIPIENT AGREEMENT (the “Agreement”), entered into and effective as of _____, 2023 (the “Effective Date”), is by and between the Board of Supervisors of Madison County, Mississippi (the “County”) and the Madison County Wastewater Authority (“MCWA”).

Recitals

WHEREAS, the American Rescue Plan Act, through the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (together, “ARPA”), allotted approximately \$350 billion to assist state, local, tribal and territory governments in responding to COVID-19; and

WHEREAS, Sections 602(b) and 603(b) of the Social Security Act, as amended by Section 9901 of ARPA, Pub. L. No. 117-2 (March 11, 2021), authorized the U.S. Department of Treasury (“Treasury”) to make payments to certain recipients under ARPA; and

WHEREAS, the County was allocated of \$20,642,090 received in two payments and, the County has deposited such monies in a separate fund (“Funds”); and

WHEREAS, Treasury has established a Final Rule, Overview, FAQ’s and related guidance, as amended from time to time, including the Uniform Grant Guidance as codified in 2 C.F.R Part 200 (altogether, the “Guidance”), setting forth specific requirements for utilizing the funds, including the eligible uses thereof, received under ARPA; and

WHEREAS the Guidance states that recipients may use ARPA funds for a broad range of water and sewer projects, including for the collection and treatment of wastewater; and

WHEREAS, in accordance with the Guidance and in the findings set forth by the County in its Minutes of the Board of Supervisors from its regular meeting of December 19, 2022, the Governing Body approved the provision of \$2,000,000 of its Funds to MCWA for wastewater improvements to enhance the infrastructure of Beattie’s Bluff Treatment Facility; and

WHEREAS, the Mississippi Senate Bill 2822 (2022) provided funding and parameters for a program, which funding is derived from Mississippi’s ARPA allocation, and will provide matching funds on a one-to-one basis to eligible counties and municipalities for making necessary investments in water, wastewater, and stormwater infrastructure known as the Mississippi Municipality and County Water Infrastructure (“MCWI”) Grant Program; and

WHEREAS, the Mississippi Department of Environmental Quality (“MDEQ”) developed regulations, FAQs, and related guidance for the MCWI program (the “MCWI Guidance”); and

WHEREAS, the MCWI Guidance defines eligible applicants to include any Mississippi county that has been awarded ARPA funds that will direct funds towards necessary investments in

infrastructure including projects that are eligible for the Environmental Protection Agency’s Clean Water State Revolving Fund Program, the Drinking Water State Revolving Fund Program, and certain storm water infrastructure projects, all as eligible under the MCWI Guidance; and

WHEREAS, on January 17, 2023, the County adopted a “Resolution of the Madison County Board of Supervisors Authorizing the Submittal of Application to the Mississippi Municipal and County Water Infrastructure (“MCWI”) Grant Program and Designating its Authorized Representatives to Execute the Application” (the “Resolution”); and

WHEREAS, pursuant to the Resolution, the County applied for funding for the WWTF and Force Main Improvements (the “Project”) under the MCWI Grant Program; and

WHEREAS, the County was subsequently awarded funding under the MCWI program for the Project pursuant to the Subaward Agreement, MDEQ Agreement No. 580-2-CW-5.5 (the “MCWI Agreement”), attached hereto as **Exhibit A**; and

WHEREAS, the Project is provisionally determined to be eligible under ARPA and its Guidance as it is improvements to be made to the County’s wastewater system as a necessary investment in Clean Water Act infrastructure.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree to the following:

Obligations

Section 1. Eligibility. (a) The Project is provisionally determined to be eligible under ARPA and its Guidance.

(b) The County has no obligation to provide funding to MCWA for the Project. The provision of funds to MCWA for the Project is at the sole discretion of the County.

Section 2. Payment. (a) As consideration for the performance of the Project and in accordance with its Minutes, the County hereby grants MCWA the sum of Two Million Dollars (\$2,000,000) from its Funds to be used exclusively for the Project and shall transfer this amount to MCWA upon execution of this Agreement.

(b) In addition and in consideration for the performance of the Project, the County will reimburse MCWA an amount of Two Million Dollars (\$2,000,000) from its Funds received from MDEQ through the MCWI Grant Program as reimbursement for performance of the Project. In doing so, the County and MCWA will cooperate to provide the reimbursement requests to substantiate Project costs in the form and within the time required by MDEQ as stated in Section 7 of the MCWI Agreement, which requirements are incorporated herein by reference.

Section 3. Recoupment. The provision of funds under Section 2 to the MCWA for the Project described herein are provisionally determined by the County to be eligible under ARPA, MCWI and the Guidance. However, the County’s provisional determination that such funding for the

Project is eligible does not relieve MCWA of its duty to repay the County for any expenditures provided by the County from its Funds for the Project that are later determined by the County, the State or the Federal government to be ineligible. **Consequently, by accepting any funds from the County's Funds, as provided herein, MCWA is certifying that it will, upon request, return to the County the full amount of any expended funds found to be inconsistent with the provisions herein, ARPA or the Guidance.**

Section 4. Period of Performance. (a) The Period of Performance shall commence upon the execution of this Agreement. Costs incurred on March 3, 2021, or thereafter, but prior to the commencement of the Period of Performance may be reimbursed provided the County determines such costs are allowable and eligible. MCWA agrees to complete the Project within this Period of Performance, unless otherwise specified in writing by the County. If, at any time during the Period of Performance of this Agreement, MCWA determines, based on the tasks performed to date, that the Project cannot be completed within the Period of Performance, MCWA shall so notify the County immediately in writing.

(b) MCWA shall take all reasonable measures to ensure that Funds are obligated by 11:59 p.m. on August 30, 2024 and expended by September 30, 2026, unless the United States Congress enacts an extension of the deadline for the availability of ARPA funds, in which case the Parties agree to extend this Agreement in accordance with the United States Congress. MCWA acknowledges and agrees that its failure to obligate Funds by 11:59 p.m. on August 30, 2024, may result in the County modifying the Funds awarded or terminating this Agreement.

Section 5. Records. For a period of five (5) years, MCWA shall generate, maintain and provide all records as required by applicable law, including those records required by the United States or by the County to satisfy the County's records, audit and reporting obligations imposed on it under ARPA and as required by this Agreement and the MCWI Agreement as a result of the Project. At any time prior to the termination of this Agreement, the County may request any documentation related to the Project and MCWA shall, within three (3) business days, provide the same to the County.

Section 6. Monitoring. (a) MCWA shall monitor the work performed on the Project to confirm the work meets all necessary requirements at law and shall, upon request, periodically provide a report to the County on the status of the Project. Likewise, the County shall monitor the disbursement of its Funds for the Project. Such monitoring procedures may include, but not be limited to, on-site visits by the County, or any of its authorized representatives, who shall enjoy the right of access to any documents, financial statements, papers, or other records of MCWA which are pertinent to the performance of Project, in order to make audits, examinations, excerpts, and transcripts to confirm compliance with ARPA and the Guidance. The right of access also includes timely and reasonable access to MCWA's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "MCWA" includes employees or agents, including all subcontractors or consultants related to the Project.

(b) MCWA shall provide required progress reports during the Period of Performance of this Agreement in a format prescribed by the County and will submit progress reports to MDEQ upon approval from the County. These reports shall be submitted in accordance with the following schedule, which may be amended from time to time:

<u>REPORTING PERIOD</u>	<u>DEADLINE</u>
October – December	January 15
January – March	April 15
April – June	July 15
July – September	October 15

This provision shall survive the expiration or termination of this Agreement with respect to any reports which the County is required to submit to the U.S. Treasury or other governmental entity following the expiration or termination of this Agreement.

(c) MCWA shall provide timely reimbursement requests and supporting documentation as required by MDEQ. Upon approval from the County, MCWA will submit reimbursement requests to MDEQ through the MCWI Portal. The County shall provide to MCWA the reimbursement funds received from MDEQ within fourteen (14) business days after receipt by the County.

Section 7. Contracts. MCWA shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. The County shall not bear responsibility for any liability caused or incurred by any contractor in performing the Project. The County shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of MCWA’s contractors, and the Parties agree and acknowledge that, as between the County and MCWA, all Project tasks shall be deemed to be the responsibility of, and performed by, MCWA. No contractor or other recipient of funds from MCWA under this Agreement shall be deemed to be an agent, representative, employee or servant of the County in connection with this Agreement.

Section 8. Applicable Law. (a) The Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Mississippi and applicable federal law excluding, its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State.

(b) MCWA shall be governed by all applicable State and Federal laws, rules and regulations, including but not limited to State and Federal laws regarding procurement requirements, record retention, and the Guidance. Any express reference herein to a particular statute, rule or regulation in no way implies that no other statute, rule or regulation applies.

(c) Both the County and MCWA are subject to U.S. Treasury’s regulations governing ARPA, and all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements (“UG”), as amended, including Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this Agreement. MCWA shall document its compliance with UG requirements, including adoption and implementation of all required policies and procedures, within thirty (30) days of the execution of this Agreement and during all subsequent reviews during the term of the Agreement. It is MCWA’s responsibility to comply with all UG requirements. Failure to do so may result in termination of the Agreement by MCWA.

Section 9. Assignment. MCWA shall not assign this Agreement, or any portion hereof or any funds provided under this Agreement, and shall not delegate any duties under this Agreement, without the prior written consent of the County.

Section 10. Amendments. Any amendments to this Agreement will be effective only if in writing and signed by an authorized signatory of MCWA and the County.

Section 11. Notices. All notices, requests, and communications required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery or delivery by overnight courier or, if mailed, upon the first to occur of actual receipt or seventy-two (72) hours after being placed in the United States mail, postage prepaid, registered or certified mail, receipt requested, addressed to the parties at the addresses as follows:

To MCWA:

Madison County Wastewater Authority
Attn: Buddy Voelkel
P.O. Box 1086
Canton, MS 39046

To County:

Madison County, Mississippi
Attn: Chancery Clerk/County Administrator/Board President
P.O. Box 404
Canton, MS 39046

With a copy to:
County Board Attorney
Attn: Mike Espy

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above but shall be effective only upon actual receipt.

Section 12. Counterparts. This Agreement may be executed in exact counterparts and when so executed by the parties hereto shall be effective in accordance with the terms hereof.

Section 13. Termination. The County reserves the right to immediately terminate this agreement in the event of a breach or default of the agreement by MCWA in the event MCWA, its employee, contractor or vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in a procurement solicitation, contract, and/or a purchase order associated with this Project; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The County also reserves the right to terminate this agreement immediately, with written notice to MCWA, for convenience, if the County believes, in its sole discretion that it is in the best interest of the County to do so. MCWA will be allowed to compensate its employee, contractor or vendor for work performed and accepted and goods accepted by the County as of the termination date if the contract is terminated for convenience of

the County. The funds for work not yet performed or goods not yet delivered as of the termination date must be returned to the County.

Section 14. Miscellaneous. MCWA agrees to abide by the following and shall include the provisions below in its agreements with its contractors and subcontractors performing the Project:

- (a) Suspension and Debarment. MCWA certifies, by signing this Agreement, that neither it nor its officers are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a Federal department or agency. MCWA will not contract with any consultant for this Project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (b) Environmental Compliance. MCWA agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (c) Procurement of Recovered Materials. MCWA, where applicable, shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (d) Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, MCWA should, to the greatest extent practicable, prefer 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). The requirements of this section must be included in all subawards including all Contracts and purchase orders for work or products under this award.
- (e) Equal Employment Opportunity. MCWA agrees to comply with the Equal Opportunity Clause provided under 41 CFR 60-1.4(a) (Government Contracts) and 41 CFR 60-1.4(b) (Federal Assisted Construction Contracts), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” MCWA further agrees to include this provision, including the Equal Opportunity Clause or a reference thereto, in any subcontracts it enters into pursuant to the Contract.
- (f) Ban on Foreign Telecommunications. MCWA acknowledges that Funds shall not be used to purchase equipment, services or systems that uses, “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered Telecommunications” means: purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities.

Video surveillance and telecommunications equipment produced by Hytera Communication Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- (g) Compliance with Copeland Anti-Kickback Act. MCWA and its contractors must comply with the Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3). The Act requires that each recipient or subrecipient be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- (h) Compliance with the Contract Work Hours and Safety Standards Act. In any contract in excess of \$100,000 that involves the employment of mechanics or laborers, MCWA must require compliance with the Act (40 USC 3702 and 3704), as supplemented by Department of Labor regulations (29 CFR Part 5). The Act requires the employer or contractor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 apply to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (i) Certification for Payment. The contractor or vendor representative seeking payment from funds issued under this agreement must declare with each pay request:

I certify to the best of my knowledge and belief that the request is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

- (j) Anti-Lobbying. No funds or other resources received by MCWA from the County under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Mississippi Legislature, Congress or any state/federal agency.
- (k) Civil Rights. In accordance with the ARPA award terms and conditions, MCWA agrees to comply with:
 - a. Title VI of the Civil Rights Act and Treasury's implementing regulations at 31 CFR 22;
 - b. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familiar status or disability;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

- d. The Age Discrimination Act of 1975, as amended (42 USC 6101 et seq) and Treasury’s implementing regulations at 31 CFR Part 23, which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- e. Title II of the Americans with Disabilities Act of 1990, as amended (42 USC 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.

(l) Further in accordance with ARPA award terms and conditions, MCWA agrees to:

- a. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to Madison County by the U.S. Department of the Treasury.”
- b. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), MCWA should adopt and encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- c. Pursuant to Executive Order 13513, 74 FR 51225 (Oct 6, 2009), MCWA should adopt and encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and MWCA should establish workplace safety policies to decrease accidents caused by distracted drivers.

Section 15. Entire Agreement. This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. MCWA acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

Section 16. Authorized Parties. The signatories below hereby certify that each is the necessary party on behalf of MCWA or the County that has been authorized with the requisite authority to enter into this binding Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

For MCWA:

For County:

Madison County Wastewater Authority

Madison County, Mississippi

By: _____

Buddy Voelkel, Executive Director

By: _____

President, Madison County Board of
Supervisors

(SEAL)

ATTEST:

By:

Chancery Clerk, Madison County Board of
Supervisors

CERTIFICATION OF CONFLICT OF INTEREST POLICY

Subrecipient must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) that is applicable to all activities funded with the ARPA subaward. Pursuant to this requirement, decisions concerning subaward funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over ARPA funds for their own private gain. Furthermore, no employee, officer, or agent of the Subrecipient may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

If the Subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the Subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. The undersigned certifies that Subrecipient maintains the necessary and compliant conflict of interest policies and diligently implements and monitors the same.

Subrecipient

Signature

Printed Name

Title

Date of Execution

ATTACHMENT “A”

Description of Improvements

PROJECT NAME

WWTF and Force Main Improvements

SCOPE OF WORK

The Project shall be defined as eligible activities funded in whole or in part under this Agreement as follows:

The Project includes construction of a flow equalization lagoon, construction of force main piping connections at the wastewater treatment plant, and extending the new force main towards Virilia Road.

The general Scope of Work to be performed by SUBRECIPIENT is limited to that which was submitted in the MCWI Application Portal and approved for funding in accordance with the MCWI Program Regulations. SUBRECIPIENT hereby agrees that no additional eligible scope may be added to this Scope of Work without the express written consent of MDEQ. The Scope of Work eligible for reimbursement is limited to that identified as eligible by MDEQ and further described by plans, specifications, contract documents, and contract change orders approved as eligible by MDEQ.