

ARPA RECIPIENT AGREEMENT

This **ARPA RECIPIENT AGREEMENT** (“Agreement”) is entered into by and between the **Kenton COUNTY Fiscal Court**, 1840 Simon Kenton Way, Covington, Kentucky 41011 (“COUNTY”) and **Northern Kentucky Water District**, 2835 Crescent Springs Road, Erlanger, Kentucky 41018 (“DISTRICT” or “RECIPIENT”) (collectively referred to as “the Parties”).

RECITALS

WHEREAS, on March 11, 2021, the American Rescue Plan Act (H.R. 1319), § 4001, (“ARPA”) was signed into law providing federal funding relief for American workers, families, industries, and state and local governments; and

WHEREAS, on April 1, 2022, the United States Department of the Treasury (hereinafter “US TREASURY”) published a Final Rule regarding the allowable usage of the Coronavirus State and Local Fiscal Recovery Funds (hereinafter “SLFRF”) to be disseminated to local governments in accordance with the ARPA; and

WHEREAS, the COUNTY desires to allocate a portion of its share of the ARPA Fund allocation to the DISTRICT to support the development, planning and construction of water main extensions to serve unserved customers within Kenton COUNTY;

WHEREAS, under section 602(c)(3) of the ARPA, the COUNTY may transfer funds to a special purpose government entity such as DISTRICT, a duly organized water district pursuant to KRS Chapter 74; and

WHEREAS, in an effort to provide additional guidance regarding the eligible uses of SLFRF funds, the US TREASURY published a document containing answers to Frequently Asked Questions regarding Coronavirus State and Local Fiscal Recovery Funds as of July 27, 2022 (hereinafter “FAQ”); and

WHEREAS, the COUNTY and RECIPIENT desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. EFFECTIVE DATE AND TERM

This Agreement shall commence when last executed by all parties and remain in effect no later than December 31, 2026, unless terminated earlier as outlined herein.

2. GRAND TOTAL SLFRF FUNDS TO BE DISSEMINATED TO RECIPIENT

The grand total subaward of SLFRF funds to be disseminated by the COUNTY to the RECIPIENT as part of this Agreement shall not exceed one million four hundred thousand dollars (\$1,400,000.00). Recipient may use SLFRF funds to cover eligible costs incurred from March 3, 2021 to December 31, 2024, as long as the obligations are incurred by December 31, 2024 and are expended by December 31, 2026.6). A cost is incurred "if the recipient has incurred an obligation with respect to such cost" by December 31, 2024. 31 CFR § 35.S(b).

3. LIMITATIONS REGARDING THE USE OF SLFRF FUNDS

The RECIPIENT shall ensure that all expenditures utilizing SLFRF funds received in accordance with this Agreement shall be limited to only those eligible services outlined in US TREASURY

4. REPORTING REQUIREMENTS TO ENSURE COMPLIANCE WITH ARPA

In order to ensure compliance with the existing ARPA guidelines set forth by the US TREASURY - while also ensuring that all expenditures within the scope of this Agreement adhere to future guidelines that may be established by the US TREASURY during the term of this Agreement - the RECIPIENT, when requesting reimbursement for eligible ARPA expenditures, shall provide to the COUNTY a comprehensive and detailed list of all such expenditures on an itemized invoice, and shall also provide any backup documentation to support such expenditures. Said invoice must include a statement, signed by the RECIPIENT, indicating that all expenditures therein comport with the guidelines of the ARPA as set forth by the US TREASURY. Reimbursement requests shall be submitted to the COUNTY no more than once per month. No reimbursement requests may be submitted to the COUNTY after December 31, 2026.

5. TIMELINE REGARDING THE DISSEMINATION OF FUNDS TO RECIPIENT

Upon receipt of the RECIPIENT's complete reimbursement request, the COUNTY shall disseminate funds for all eligible ARPA expenditures therein within thirty (30) days of receipt of said reimbursement request. The dissemination of SLFRF funds shall only occur after the COUNTY reviews the RECIPIENT's reimbursement request to ensure that all expenditures detailed therein qualify for reimbursement in accordance with all published federal, state, and local guidance regarding the use of SLFRF funds as specified in the ARPA. All payments are subject to all applicable federal, state, and local laws regarding the governance of SLFRF funds within the ARPA.

6. EVOLUTION OF ARPA GUIDANCE FROM THE US TREASURY

The COUNTY may request additional information from the RECIPIENT, as needed, to meet any requirements or guidelines in effect or that may be otherwise established by the US TREASURY during the scope of this Agreement regarding the use of SLFRF funds.

7. TERMINATION

a. Termination for Cause. If the RECIPIENT fails to comply with the terms and conditions of this Agreement and any of the following conditions exist:

- i. The lack of compliance with the provisions of this Agreement is of such scope and nature that the COUNTY deems continuation of this Agreement to be substantially non-beneficial to the public interest;
- ii. The RECIPIENT has failed to take satisfactory corrective action as directed by the COUNTY or its authorized representative within the time specified by the same; or
- iii. The RECIPIENT has failed within the time specified by the COUNTY or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Agreement;

Following notice to the RECIPIENT of the COUNTY's intent to terminate this Agreement for cause, and after a reasonable opportunity to cure of not more than 15 calendar days, the COUNTY may pursue such remedies as are available by law, including, but not limited to, the termination of this Agreement in whole or in part, and thereupon shall notify in writing the RECIPIENT of the termination, the reasons for the termination, and the effective date of the termination. Upon termination, any outstanding SLFRF funds held by the RECIPIENT are subject to recoupment by the COUNTY in accordance with ARPA, the SLFRF program and this Agreement. Any costs resulting from obligations incurred by the RECIPIENT after termination of this Agreement are not allowable and will not be reimbursed by the COUNTY unless specifically authorized in writing by the COUNTY.

b. Termination for Convenience. The Agreement may be terminated for convenience, in whole or in part, as follows:

- i. By the COUNTY with the consent of the RECIPIENT. The two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- ii. By the RECIPIENT upon submitting written notification to the COUNTY. The written notification must set forth the reasons for the termination, the effective date, and in the case of partial termination, the portion to be terminated. However, in the case of a proposed partial termination, the COUNTY may terminate the Agreement and recoup all granted SLFRF funds in their entirety if the COUNTY determines that the remaining portion will not accomplish the purpose for which the award was made.

c. Termination for Withdrawal, Reduction, or Limitation of Funding. In the event funding is not received from the Federal Government, or is withdrawn, reduced, modified or limited in any way after the effective date of this Agreement and prior to its normal completion, the COUNTY may summarily terminate this

Agreement as to the funds not received, reduced, modified or limited, notwithstanding any other termination provision in this Agreement. If the level of funding is reduced to such an extent that the COUNTY deems that the continuation of the Project covered by this Agreement is no longer in the best interest of the public, the COUNTY may summarily terminate this Agreement in whole notwithstanding any other termination provisions in this Agreement. Termination under this Section shall be effective upon receipt of written notice by the RECIPIENT or its representative.

8. INDEPENDENT CONTRACTOR

Each party under the Agreement shall be for all purposes an independent Contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The RECIPIENT shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the COUNTY for any purpose.

9. HOLD HARMLESS

To the extent authorized by Kentucky law, the RECIPIENT agrees to hold the COUNTY, its officers, officials, employees, agents, and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses, including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the RECIPIENT, its officers, directors, employees, and/or agents relating to the RECIPIENT's performance or failure to perform under this Agreement. This section shall survive the expiration or termination of this Agreement.

10. COMPLIANCE WITH LAWS AND GUIDELINES

The RECIPIENT shall comply with all federal, state, and local laws and all requirements and published guidance set forth regarding the usage of any and all monies appropriated under the ARPA.

11. MAINTENANCE AND AUDIT OF RECORDS

The RECIPIENT shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by the COUNTY or its designees, the SAO, and the US TREASURY for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the RECIPIENT was reimbursed for unallowable costs under this Agreement or any, the RECIPIENT agrees to promptly reimburse the COUNTY for such payments upon request.

12. NOTICES

Any notices desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the US Postal Service (postage fully prepaid, certified mail, return receipt requested), and addressed to the party to which it

is intended at its last known address, or to such person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

RECIPIENT

Northern Kentucky Water District
Attn: Lindsey Rehtin, President/CEO
2835 Crescent Springs Road
P.O. Box 18640
Erlanger, Kentucky 41018

COUNTY

Kenton County Fiscal Court
Attn: Judge Executive Kris Knochemann
1840 Simon Kenton Way
Covington, Kentucky 41011

13. IMPROPER INFLUENCE

Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

14. CONFLICT OF INTEREST

The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

15. TIME

Time is of the essence in this Agreement.

16. SURVIVAL

The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

17. AMENDMENT

No amendment or modification to the Agreement shall be effective without prior written consent of the authorized representatives of the parties.

18. GOVERNING LAW; VENUE

The Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky, both as to interpretation and performance, without regard to conflicts of law or

choice of law provisions. Any action arising out of or in conjunction with the Agreement may be instituted and maintained only in a court of competent jurisdiction in Kenton County, Kentucky.

19. NON-WAIVER

No failure on the part of the COUNTY to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the COUNTY of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the COUNTY at law or in equity.

20. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

21. ASSIGNMENT

The RECIPIENT shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the COUNTY.

22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the COUNTY and the RECIPIENT for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

23. NO THIRD-PARTY BENEFICIARIES

Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either party has to the US TREASURY in connection with the use of ARPA funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

24. CIVIL RIGHTS COMPLIANCE

Recipients of Federal financial assistance from the US 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 US 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), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and

the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

25. SEVERABILITY

In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

26. COUNTERPARTS

This Agreement may be executed in on or more counterparts, any of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27. AUTHORIZATION

Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF , this Agreement is executed and shall become effective as of the last date signed below:

Dated this _____ day of _____, 2021.

Kenton County Fiscal Court

Northern Kentucky Water District :

By:_____

By:_____

Name: Kris Knochemann

Name: Lindsey Rehtin

Title: Judge Executive

Title: President/CEO