

SOUTH DAKOTA
WATER AND ENVIRONMENT FUND
GRANT AGREEMENT

GRANT AGREEMENT made and entered into effective upon its execution by all parties, by and among the Board of Water and Natural Resources (the "Board") and the SD Department of Environment and Natural Resources ("DENR"), Joe Foss Building, Pierre, South Dakota 57501, hereinafter collectively referred to as the Grantor and Pennington County, acting through its Board of County Commissioners, 300 Kansas City Street, Rapid City, SD 57701, hereinafter referred to as "Pennington County", Meade County, acting through its Board of County Commissioners, 1425 Sherman Street Sturgis, SD 57785, hereinafter referred to as "Meade County", the City of Box Elder, acting through its Mayor, 520 N. Ellsworth Road Ste 9C Box Elder, SD 57719, hereinafter referred to as "Box Elder", and the City of Rapid City, acting through its Mayor, 300 6th Street Rapid City, SD 57701, hereinafter referred to as "Rapid City", (collectively the "Grantee");

WITNESSETH:

WHEREAS, the 2007 Legislature enacted section 9 of House Bill 1245 which appropriates \$100,000 to the Board of Water and Natural Resources for the purpose of providing grants to the local project sponsors for a feasibility study for developing regional water and sewer infrastructure in the Rapid City area to include Box Elder and portions of Meade County and Pennington County, according to the terms and conditions established by the Grantor; and,

WHEREAS, Meade County, Pennington County, the City of Box Elder and the City of Rapid City (the "Local Governments") have worked together to form the Moving Forward With Ellsworth Steering Committee, to examine the concept of regional approaches to mutual goals such as water and sewer development, and have entered into a Joint Powers Agreement with the Board to take part in a joint study with Ellsworth Air Force Base on the feasibility of building a mechanical sewerage treatment facility east of Box Elder in the Box Elder drainage basin for the eventual use of multiple qualified bulk users known as the EAFB, Box Elder Drainage, I-90 Corridor Multiple Jurisdictional Bulk Sewerage Treatment Feasibility Study Project (the "Project"); and

WHEREAS, the Local Governments have determined to jointly serve as Project Sponsor for the Project to determine the feasibility of building a regional bulk sewerage mechanical treatment plant east of Box Elder in the Box Elder drainage basin that would treat sewerage for both the City of Box Elder and Ellsworth Air Force Base, and potentially qualified bulk users further west up the Box Elder Drainage Basin; and

WHEREAS, the Secretary, Department of Environment and Natural

Resources, (the "Secretary"), is hereby designated as the representative of the Board to do all things on its behalf allowable under the terms of the Grant Agreement, and doing those acts specified in this Agreement to be performed by the State; provided, that the Secretary is hereby empowered to delegate such authority in writing to those persons under his supervision as he deems appropriate; and,

WHEREAS, the Grantee is a duly organized, legal entity eligible to receive the funds appropriated, has agreed to assume responsibility for the Project as local project sponsor, and has submitted a letter requesting the funds be obligated to conduct a feasibility study for the development of regional water and sewer infrastructure in the Project study area; and,

WHEREAS, the Grantor has considered the request of the Grantee for funds for the purposes of the Project, and has approved the request by a duly authorized resolution and has approved and authorized the execution of this agreement; and,

WHEREAS, the Grantee desires to enter into this Agreement, for the consideration hereinafter set forth, and for the purposes of conducting the project described herein, and is ready, willing and able to enter into this Agreement for those purposes;

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. In consideration of the Grantee's observance and performance of the covenants, agreements, terms and conditions set forth herein and in reliance on the representations made by the Grantee herein, the Grantor hereby grants to the Grantee for the Project an amount not to exceed \$100,000 for engineering, legal and financial services directly related to the Project. In consideration of the funding by the Grantor, the Grantee agrees, warrants, and represents that it will comply with the terms and conditions set forth herein.
2. The term of this Agreement shall commence upon the execution of this Agreement, and shall end upon completion of the Project or on December 31, 2008, whichever is the earliest date, provided, however, that the obligations of the Grantee pursuant to section 3 and 20 of this Grant Agreement shall survive termination.
3. Grant proceeds will be kept in the state treasury, in the Water and Environment Fund, and shall be disbursed based upon the Grantee's request for disbursements. Grantee will submit signed requests for disbursements using a form prescribed by the State, together with all

attachments required by such form. The request for disbursement will be submitted to such person or persons as the State may designate for approval. Disbursements may be obtained only for those Project costs which have been legally incurred, and which are due and payable, or have been paid by the Grantee. The Grantee will designate, in writing, an official to certify on Grantee's behalf that the request submitted is correct and is a valid expenditure for the Project. At no time may the sum withdrawn by a request for payment exceed in the aggregate the sum specified in paragraph number 1. The Grantor shall disburse the funds directly to the contractor or sub-contractor supplying the service or material for which the payment is sought. Disbursements for travel and subsistence may not exceed the rates established in the rules and regulations of the State Board of Finance relating to travel and subsistence expenses for state employees. No funds will be disbursed until all fees owed by the Grantee to the Department of Environment and Natural Resources are paid. All requests for disbursement for eligible Project costs under this Grant Agreement not presented within ninety (90) days after the completion of the term of this Grant Agreement are barred from payment.

4. The Grantee agrees to comply with all federal, state, and local laws, regulations, and ordinances relating to the construction, operation, and maintenance of the Project, and will be solely responsible for obtaining current information on such requirements.
5. The Grantee warrants, represents, and agrees that it will cause its contractors, subcontractors, employees, and legal representatives to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits, and requirements, and adopt such review and inspection procedures as are necessary to assure such compliance. In the event of conflict between federal, state, and local laws and regulations, compliance with the more restrictive laws and regulations shall be deemed compliance with the less restrictive ones.
6. The Grantee shall establish and maintain books and records related to the Project and its financial affairs to be established and maintained in accordance with financial and reporting standards as promulgated Governmental Accounting Standards Board, the Financial Accounting Standards Board, or Other Comprehensive Basis of Accounting, as appropriate, and give the Grantor, through any authorized representatives, access to and the right to examine and copy all records, books, papers, or documents to be retained for a period of not less than three years following completion of the Project.

7. The Grantee warrants and represents that it intends in good faith to use the funds described herein for the purposes of the Project. The Grantee further warrants that the monies received pursuant to this agreement do not exceed 80% of the total nonfederal Project costs. The Grantee will provide 20% of the total nonfederal Project as local match, one half of which will be cash, and further agrees to provide evidence of such local match to the Grantor. The Grantor will advance funds only to the extent that the Grantee provides evidence of concurrent local match contribution. Local match in the form of cash and in kind services shall be subject to prior approval by the Grantor or its designated agent. Local match such as cash and in kind services, shall be subject to audit by the Grantor.
8. Grantee's budget and work plan may be completed in phases. The scope of work for each phase will be submitted to the Secretary for approval and will not be funded without such prior written approval from the Secretary. No expenditures may be incurred outside of a work plan that has received prior approval by the Secretary for approval.
9. The Grantee agrees to conduct the Project and its facilities in accordance with the minimum standards as may be required or prescribed by the Federal, state, or local agencies with jurisdiction over the maintenance and operation of the Project. The Grantee will provide the Grantor with copies of any Project reports or findings.
10. The Grantee shall at all times during the term of this Grant Agreement keep and maintain property and casualty insurance, workers compensation, and liability insurance with insurers licensed to do business in the State, or risk pool coverage programs described in SDCL chapter 3-22, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Grantee, and similarly situated with facilities of the Project's type, and provide proof of such coverage to the Grantor. Any policy provided pursuant to this section must provide that it cannot be canceled without 30 days prior written notice of cancellation. The Grantee further agrees to cause its contractors to acquire and maintain adequate property, worker's compensation, and liability insurance and provide proof of such coverage to the Grantor.
11. The Grantee warrants and represents that there is no fact that the Grantee has not specifically disclosed in writing to the State that materially and adversely affects or will materially and adversely affect the properties, operations and finances of the Grantee, its legal status, or its ability to perform its obligations hereunder.
12. The Grantee will provide the Grantor with the written opinion of an attorney duly licensed to practice law in the State of South Dakota, and

said opinion certifying if applicable:

- a. The Grantee possesses legal authority to receive the funds and to carry out the proposed Project, and if applicable, the Grantee is a duly organized and existing legal entity under the South Dakota law;
 - b. That the Grantee has duly acquired those rights-of-way, easements, permits, and licenses necessary for the Project, and that the legal instruments evidencing that acquisition are in appropriate legal form and adequately confer upon the Grantee the necessary right for the Project and that such omissions or defects as may exist will, in no substantial way or manner, endanger the value or operation of the Project, and that those legal instruments have been or will be duly and properly filed or recorded if applicable;
 - c. That such consents, releases, waivers, or subordinations required by the Grantor have been or will be obtained and recorded if applicable; and
 - d. That there is no action, suit, or proceeding, inquiry or investigation at law or in equity or by any judicial or administrative court or agency, pending or threatened against it wherein an unfavorable decision, ruling or finding would affect the validity or enforceability of this Agreement or would adversely affect the ability of the Grantee to comply with its obligations hereunder.
13. The Grantee agrees to cause its contractors to acquire and maintain adequate property, worker's compensation, and liability insurance and provide proof of such coverage to the Grantor.
 14. No part of the funding provided hereunder may be utilized for the payment of costs associated with litigation directly or indirectly involving the Grantee or the Project. No director of the Grantee or other agents, employees or immediate family members, shall receive direct personal benefit from this Agreement other than reasonable compensation for services rendered or expenses incurred in furtherance of the purposes herein authorized, or benefits received as a member of the general public served by this Project.
 15. The Grantee assures that the Grantor will at its discretion have the right of ingress and egress at any time for the purpose of conducting on site inspection of the Project to assure the Project is conforming to the approved work plan.
 16. The Grantee agrees to submit, if requested, within ten (10) working days of the end of a calendar quarter on a form provided by the Grantor, an

activity status report detailing the activities and progress of the Project.

17. In the event of default by the Grantee, or breach of any of its respective duties hereunder, or in the event of an improper use of funds hereunder, or in the event of its failure or refusal to perform any covenants or agreements hereunder, or in the event of the insolvency or dissolution of the Grantee, the Grantor may, at its sole option, declare this Agreement to be in default, and shall provide the Grantee with thirty (30) days written notice of such default. If such default has not been cured within thirty (30) days following the Grantee's receipt of such written notice, the Grantor may, at its sole option, cancel this Agreement, and the Grantee shall be obligated to reimburse the Grantor for any funds theretofore improperly expended by or for the benefit of the Grantee, or any part thereof, and if not promptly paid the Grantor may pursue all rights and remedies under any applicable laws or regulations. The failure of the Grantor to enforce strict performance of any covenant, promise, term, or condition herein contained, shall not operate as a waiver of its right thereafter to require that the terms hereof be strictly performed.
18. The Grantee shall indemnify and hold the Grantor, its members, officers, agents and employees harmless from and against any and all claims, liability, actions, damages, demands, expenses, and losses, of any kind or character whatsoever, resulting from or in any way connected with the condition, use, operation, management, design, planning, construction, installation, management or financing of the Project, including all costs, reasonable attorney fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. Grantee shall upon request defend any such claim or demand on behalf of the Grantor. Provided, however, that the foregoing does not require the Grantee to indemnify the Grantor, its members, officers, agents or employees from any claim or demand arising solely from the intentional or willful misconduct or negligence the Grantor, its members, officers, agents or employees.
19. The rights and remedies herein conferred upon the Grantor shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law.
20. Any required or permitted notice or other communication under this Grant Agreement shall be in writing and sent to the address set forth in this Grant Agreement. Notices shall be given by and to the Secretary, Department of Environment and Natural Resources, and by and to the respective Chairman, Board of County Commissioners on behalf of Meade County and Pennington County, and by and to the respective Mayor, on behalf of the City Box Elder and the City of Rapid City, on behalf of the Grantee, 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.

21. In the event that any provision of this Grant Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
22. All other prior discussions, communications and representations concerning the subject matter of the Grant are superseded by the terms of this Grant Agreement, and except as specifically provided herein, this Grant Agreement constitutes the entire agreement with respect to the subject matter hereof.
23. This Agreement, or any part thereof, or the benefits to be received hereunder shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation, or other entity by the Grantee without the expressed prior written consent of the Grantor.
24. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting the Grant Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
25. This Agreement and the covenants herein contained shall inure to the benefit of and be obligatory upon the heirs, executors, administrators, legal representatives, agents, employees, successors in interest, and assigns of the respective parties hereto.
26. This Agreement may not be modified or amended except in writing, which writing shall be expressly identified as a part of this Agreement, and which writing shall be signed by authorized representatives of each of the parties hereto.
27. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

IN WITNESS WHEREOF, the parties have set their hands and seals on the

day and year above first written.

STATE OF SOUTH DAKOTA

(SEAL)

BY: _____
Chairman, Board of Water and Date
 Natural Resources

ATTEST:

Secretary, Board of Water and Date
 Natural Resources

MEADE COUNTY

By: _____
Chairperson Date
Board of County Commissioners

PENNINGTON COUNTY

By: _____
Chairperson Date
Board of County Commissioners

CITY OF BOX ELDER

By: _____
Mayor Date

CITY OF RAPID CITY

By: _____
Mayor Date