

AGREEMENT FOR MUTUAL OPERATIONAL ASSISTANCE

Between

LEWES BOARD OF PUBLIC WORKS

and

SUSSEX COUNTY COUNCIL

The Agreement for Services is made and entered into this __ day of _____, 2022 (“Effective Date”), by and between the Board of Public Works of the City of Lewes, the governing body of the Lewes Area Utility (hereinafter referred to as “LBPW”), and Sussex County Council (“COUNTY”) for the period ending June 30, 2023.

WHEREAS, the LBPW and COUNTY desire to engage in a mutual operational assistance agreement pursuant to Title 9 Del. Code § 6702 and the Charter of the Board of Public Works of the City of Lewes, hereinafter referred to as the “Agreement”; AND;

WHEREAS, the LBPW and the COUNTY agree that it would be the most cost-effective alternative for both parties to assist each other, as necessary when and as requested, in the operation of their respective water distribution, wastewater collection, treatment and transmission systems hereinafter referred to as the “System”; AND;

WHEREAS, the LBPW and County have recently jointly funded a Lewes Wastewater Treatment Facility – Long Range Planning Study by GHD, Inc. the mutual consulting engineer for both entities; AND;

WHEREAS, the LBPW has requested, and the COUNTY has agreed, that the LBPW would reimburse the COUNTY for the costs incurred by the COUNTY for such cooperation on either a time and material basis or a reimbursement basis for 3rd party expenses under the COUNTY’s General Labor & Equipment Contract; AND

WHEREAS, the COUNTY has requested, and the LBPW has agreed, that the COUNTY would reimburse the LBPW for the costs incurred by the LBPW for such cooperation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the adequacy and sufficiency of which are acknowledged, the LBPW and the COUNTY, intending to be legally bound, hereby covenant and agree as follows:

1. When requested by the LBPW, and for as long as requested during the term of this Agreement, the COUNTY will provide the appropriately trained, qualified and licensed wastewater operators and mechanical/electrical staffing assistance necessary to operate and maintain the System including but not limited to remote monitoring (using LBPW's "Pointwatch System"), operational assistance, preventive maintenance, emergency response during regular work hours as well as call outs outside regular work hours.
2. The LBPW shall reimburse the COUNTY for direct and indirect staffing expenses incurred in the performance of the services required herein at the benefit rates as established under the COUNTY's annual budget ordinance or the Collective Bargaining Agreement. The COUNTY will submit monthly labor expenses incurred for employees. However, system monitoring hours incurred shall be prorated by the ratio of LBPW's pump stations divided by the number of COUNTY pump stations. Invoices are payable within no more than thirty (30) days of receipt.
3. If non-emergency minor, (which are defined as capital funds individually comprising less than \$10,000), capital funds are required in the preventive maintenance program, the COUNTY will implement these improvements and copy the LBPW on the respective purchase order. If major, (which are defined as capital funds individually

comprising equal to more than \$10,000), capital funds are required COUNTY will obtain LBPW's approval prior to commencement of remedial action. If, in the COUNTY's sole discretion, expenditure of emergency capital funds is required, and the COUNTY is unable to contact the LBPW within a reasonable period of time, then the COUNTY may proceed with said emergency repairs without prior authorization from the LBPW, but the COUNTY must notify the LBPW of said emergency repairs as soon as reasonably possible. All capital costs incurred will be included in the subsequent monthly reimbursement request at costs incurred.

4. The LBPW further agrees to reimburse the COUNTY for hourly, COUNTY owned, equipment utilization expenses incurred in the performance of the services required herein at FEMA schedule rates and/or rates established by the COUNTY's annual budget ordinance. All equipment costs incurred will be included in the subsequent monthly reimbursement request.
5. When requested by the COUNTY, and for as long as requested during the term of this Agreement, the LBPW agrees to assist the COUNTY on either regular maintenance tasks or emergency responses concerning the COUNTY's System using LBPW's labor and equipment, and the COUNTY agrees to compensate LBPW at cost.
6. When formal notice of a non-emergency assistance request is conveyed by LBPW to the County Engineer and/or County Administrator, the COUNTY, within sixty (60) days, shall provide staff to fully implement the anticipated scope, including but not limited to items identified in Paragraph 1 and LBPW shall deliver to COUNTY System information in GIS format georeferenced to be compatible with COUNTY GIS data and technical training, by staff, contractors and or manufacturers, of LBPW assets.

7. The party requesting assistance under this Agreement may withdraw said request at any time in its sole discretion.

8. Miscellaneous:

A. The LBPW hereby indemnifies and holds the COUNTY harmless, to the extent the LBPW can so indemnify and hold the COUNTY harmless without waiving or otherwise undermining its municipal immunity, from any liability or damage arising from any and all claims of property damage, personal injury, or death, including the payment of the COUNTY's reasonable attorneys' fees, occurring as a result of this Agreement. The LBPW's indemnification of the County shall be limited to this Agreement with the County and, except as set forth herein, nothing in this Section 9 nor anything else in this Agreement shall be considered a waiver of the municipal immunity for the LBPW or its elected officials, agents, employees, officers, and representatives. The LBPW reserves to itself to the fullest extent available by statute and at law all immunities available to it as a governmental entity.

B. The COUNTY hereby indemnifies and holds the LBPW harmless, to the extent the COUNTY can so indemnify and hold the LBPW harmless without waiving or otherwise undermining its immunity, from any liability or damage arising from any and all claims of property damage, personal injury, or death, including the payment of the LBPW's reasonable attorneys' fees, occurring as a result of this Agreement. The COUNTY's indemnification of the LBPW shall be limited to this Agreement with the LBPW and, except as set forth herein, nothing in this Section 9 nor anything else in this Agreement shall be considered a waiver of the immunity for

the COUNTY or its elected officials, agents, employees, officers, and representatives. The COUNTY reserves to itself to the fullest extent available by statute and at law all immunities from liability available to it as a governmental entity.

- C. No amendments or modifications to this Agreement shall be binding unless in writing and signed by the COUNTY and the LBPW.
- D. This Agreement shall be binding upon and for the benefit of the parties hereto and their respective heirs, executors, administrators, successors of the COUNTY and LBPW in like manner as upon the original parties, except as provided by mutual written agreement.
- E. This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof, and the parties acknowledge and agree that there is no other agreement or understanding, written or oral, between the parties hereto concerning the subject matter hereof.
- F. The Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware without regard to principles of conflict of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in Sussex County, Delaware, or if under federal jurisdiction, in the District Court of the State of Delaware.
- G. Any notice provided for herein, unless otherwise noted, shall be given by electronic delivery or USPS mail, addressed to, if for the COUNTY: Sussex County Engineer,

Sussex County Department of Engineering, 2 The Circle, P.O. Box 589,
Georgetown, Delaware 19947, and if for LBPW: General Manager, 107 Franklin
Avenue, Lewes, DE 19958.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
by their proper corporate officers and their respective corporate seals to be hereto affixed, the day
and year first above written.

LEWES BOARD of PUBLIC WORKS

Attest: _____
D. Preston Lee P.E., Secretary

By: _____
Thomas s. Panetta, President

SUSSEX COUNTY

Attest: _____
Clerk, Sussex County Council

By: _____
Michael H. Vincent, President