

## UTILITY AGREEMENT

This Utility Agreement is hereby made and entered into this \_\_\_ day of \_\_\_\_ 2020, by and between the **DELAWARE DEPARTMENT OF TRANSPORTATION**, an agency of the State of Delaware (“DelDOT”), and the **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, a chartered utilities board (the “BPW”). DelDOT and the BPW are collectively referred to herein as the “Parties”.

### WITNESSETH

**WHEREAS**, the BPW owns and is responsible for maintaining, controlling, supervising, and operating utility infrastructure throughout the City of Lewes and the BPW Service Area;

**WHEREAS**, the BPW is undertaking utility improvements on and under Coleman Street and Kings Highway, as shown in that certain Phase 24 Street Improvements and Water Main Replacement dated July 2020, as may be amended thereafter, prepared by George, Miles & Buhr, LLC (“GMB”) that will upgrade aging water distribution infrastructure and improve stormwater drainage (the “Utility Improvement Project”);

**WHEREAS**, the Utility Improvement Project will connect a BPW-owned and operated 12-inch reinforced concrete storm drain pipe from a BPW-owned and operated catch basin on Coleman Avenue (the “BPW Infrastructure”) to a DelDOT-owned and operated catch basin on Kings Highway (the “DelDOT Infrastructure”);

**WHEREAS**, DelDOT desires that the BPW bear the direct costs and expenses, if any, to repair any damage to the specific components connecting the BPW Infrastructure to the DelDOT Infrastructure as shown in the Utility Improvement Project (the “Connection Components”) and the BPW agrees to be responsible for such direct costs and expenses.

**NOW, THEREFORE,** for and in consideration of the mutual covenants, promises, agreements, and stipulations contained herein, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Should the Connection Components require repair or replacement at any time in the future, the Parties agree that the BPW will bear the direct costs and expenses limited to such repair or replacement of said Connection Components. For avoidance of doubt, the BPW shall not be responsible for any costs and expenses to maintain, repair, or replace the DelDOT Infrastructure. However, in the event that the BPW shall determine that the BPW Infrastructure and/or the Connection Components shall require any maintenance, flushing, repair, and/or replacement (“Work”), the BPW shall take all steps reasonably necessary to protect and preserve the DelDOT Infrastructure. Such steps shall include, but not be limited to, an obligation upon the BPW to notify DelDOT a minimum of fourteen (14) calendar days prior to commencing such Work and to prevent sediment and/or trash from entering the DelDOT Infrastructure from the BPW Infrastructure and/or the Connection Components. Said prior notice of Work may only be waived in the event of emergency and, in such event, the BPW shall notify DelDOT as soon as reasonably practicable following identification by the BPW of the circumstances constituting such emergency. Further, the BPW Infrastructure shall not, under any circumstances, be modified, extended or expanded beyond the approved Utility Improvement Project parameters without the express written approval of DelDOT, which consent may be withheld by DelDOT in its reasonable discretion.

2. All terms and conditions of this Utility Agreement shall be binding upon the parties hereto and each of their successors and/or assigns. To that end, in the event that the BPW shall ever, at any time, sell or otherwise transfer utility rights and/or obligations to any other entity that

will include the BPW Infrastructure, the BPW shall notify DeIDOT of such sale or transfer no less than thirty (30) days prior to the completion of such sale or transfer and provide contact information for such other entity to DeIDOT at that time. Further, in such event, the BPW shall notify such other entity of the existence of this Utility Agreement and provide a copy of this Utility Agreement to such other entity that shall be obligated under the terms of this Utility Agreement.

3. This Agreement is made and executed under, and in all respects is to be governed and construed by, the laws of the State of Delaware.

4. This Agreement may be signed in counterparts.

**IN WITNESS WHEREOF**, the Parties have each caused this Agreement to be executed and sealed on the day and year above first written.

WITNESS:

**DELAWARE DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
\_\_\_\_\_, \_\_\_\_\_

STATE OF DELAWARE            )  
  ) S.S.  
COUNTY OF \_\_\_\_\_        )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, came before me the Subscriber, a Notary Public in and for the State and County aforesaid, \_\_\_\_\_, \_\_\_\_\_ of Delaware Department of Transportation, party to this Agreement, known to me personally to be such, and acknowledged this Agreement to be his act and deed on behalf of said limited liability company.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

\_\_\_\_\_(SEAL)  
Notary public or Notarial Officer  
Print Name: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

ATTEST:

**THE BOARD OF PUBLIC WORKS OF THE  
CITY OF LEWES**

\_\_\_\_\_  
Robert Kennedy, Secretary

By: \_\_\_\_\_(SEAL)  
D. Preston Lee, P.E., President

STATE OF DELAWARE            )  
  ) S.S.  
COUNTY OF KENT                )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, came before me the Subscriber, a Notary Public in and for the State and County aforesaid, D. Preston Lee, Present of the Board of Public Works of the City of Lewes, party to this Agreement, known to me personally to be such, and acknowledged this Agreement to be his or her act and deed on behalf of the Board of Public Works of the City of Lewes.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

\_\_\_\_\_(SEAL)  
Notary public or Notarial Officer  
Print Name: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_