

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 is entered into between the **CITY OF LEWES** (“CITY”), a municipal corporation of the State of Delaware and the **BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**, a chartered utility of the State of Delaware (“BPW”).

**WHEREAS**, in the interest of CITY residents and BPW ratepayers, the City and BPW desire to memorialize their agreement to collaborate and cooperate concerning a number of issues impacting both entities.

**NOW THEREFORE**, in consideration of the covenants and agreements herein contained, the CITY and BPW hereby agree to the following:

### **Section 1. Charter Amendment – Extension of Utility Services Outside City Boundaries**

The CITY and BPW agree to pursue an amendment to the BPW Charter to require the CITY’s consent before the BPW may extend utility services to areas outside the corporate boundaries of the City of Lewes.

### **Section 2. Charter Amendment – BPW Authority to Sue and Be Sued**

The CITY and BPW agree to pursue an amendment to the BPW Charter to provide BPW with the general authority to sue and be sued. The CITY and BPW further agree that this amendment shall, to promote collaboration and dialogue between the City of Lewes Mayor and City Council and the BPW Board of Directors , also prohibit either entity from suing the other until July 1, 2026.

### **Section 3. Waiver of Building/Construction Permit Fees and Inspection Fees**

BPW agrees to comply with the CITY’s building and street repair permitting requirements for all BPW projects. The CITY agrees to not charge BPW a building/construction permit fee and to not charge BPW for CITY inspections. BPW agrees to not charge the CITY plumbing permit and inspection fees for CITY projects.

### **Section 4. Reestablishment of Capital Projects Committee**

The CITY agrees to reestablish its previous Capital Projects Committee by September 1, 2021 which will include representation by BPW. The Capital Projects Committee shall work collaboratively to coordinate work activities on projects such as streets rehabilitation and building construction or renovation involving the CITY and the BPW.

### **Section 5. Waiver of Fees**

BPW agrees to not charge the CITY fees directly related to the construction of public restroom and shower facilities. BPW further agrees to not charge the CITY fees directly related to the construction of facilities “beneficial” to City residents and visitors. The CITY will have the burden of demonstrating to BPW, and the BPW will have the discretion to determine, that the project is beneficial to City residents and visitors and therefore a waiver of fees is warranted.

## **Section 6. Review of Stormwater Fee Structure**

BPW agrees to review its stormwater fee structure to determine if there is a more appropriate structure that can be fairly and easily administered. If the BPW determines that there is a more appropriate fee structure, BPW shall adopt policies, resolutions, or both, to implement such fee structure. BPW shall work collaboratively with the CITY in conducting this review of the stormwater fee structure.

## **Section 7. Compliance with Zoning Laws**

BPW agrees that the use of real property purchased for use by the BPW within the City of Lewes municipal limits shall comply with the CITY Zoning regulations concerning use of real property within the City of Lewes. To the extent BPW intends to use property for a municipal purpose not consistent with applicable zoning laws, BPW will have the burden of demonstrating to the CITY, and the CITY will have the discretion to determine, that the intended use is a municipal purpose and that a waiver of zoning requirements is warranted.

## **Section 8. Schley Avenue Property Master Plan**

The CITY and BPW shall collaborate on the development of a Master Plan for property the CITY and BPW previously purchased on Schley Avenue between Franklin and Washington Avenues, in consideration of the current use and zoning of the parcels and the surrounding area.

## **Section 9. Use of Porous Pavement**

If the CITY adopts an ordinance requiring the use of porous pavement in the flood zone, BPW agrees to install porous pavement for applicable street rehabilitation projects. The CITY and BPW shall share the costs of street vacuuming or other cleaning activities required to maintain the functionality of porous pavement. Minor street improvements and pothole repairs shall not require the use of porous pavement unless such street already has a porous pavement surface.

## **Section 10. Title to Real Estate**

The CITY and BPW shall prepare and record with the Sussex County Recorder of Deeds new deeds of conveyance jointly titling in the CITY and BPW the following properties:

***Properties currently jointly titled in the CITY and BPW and recorded with the Sussex County Recorder of Deeds, but included here for clarity:***

- 335-8.12-28.00 (Power/Water Plant and Env. Grinder Pumps 29 and 30)
- 335-8.12-25.00 (Water Tower)
- 335-8.12-27.00 (Blue House/Office)
- 335-8.00-33.00 (Water Treatment Plant, Wells 1A-5A)

***Properties to be jointly titled in the CITY and BPW and recorded with the Sussex County Recorder of Deeds:***

- 335-8.12-15.00 (Electric Plant/Water/Sewer, Substation and Lift Station 13)
- 335-8.08-149.00 (Pump Station 4)
- 335-8.00-537.00 (Lift Station 10)
- 335-8.00-741 (Lift Station 19)
- 335-8-12-77.01

***Property to be jointly titled in the CITY and BPW and recorded with the Sussex County Recorder of Deeds (Currently this property is titled solely in BPW):***

- 335-8.00-997.00 (Lift Station 20)

***Wastewater Treatment Facility laydown yard***

- 335-4.20-201.00 This property will not be jointly titled in the CITY and BPW. The CITY and BPW shall develop a joint use and maintenance agreement for the laydown area.

***Waste Water Reclamation Plant – Lift Station/Pump Station 8***

- 335-8.08-1.00 A new parcel encompassing the Waste Water Treatment Plant will be subdivided from this parcel and will be jointly titled in the CITY and BPW and recorded with the Sussex County Recorder of Deeds. The CITY and BPW shall develop a joint use and maintenance agreement for the outfall pipe and lift station, which would be outside of the new parcel.

All costs to prepare and record deeds, including but not limited to surveying costs, deed preparation costs, and recording costs, shall be equally shared between the CITY and BPW.

**Section 11. Review of BPW Lease**

The CITY with the assistance from BPW shall review the current lease agreement dated October 1, 2014 between the CITY and BPW for BPW's office space and adjust the rate, as necessary, to be consistent with the market rate for similar properties.

**Section 12. Street Sweeping and Leaf Collection**

The CITY shall collaborate with BPW to improve seasonal street sweeping and leaf collection to minimize the clogging of the stormwater management system.

**Section 13. Parking at BPW Offices**

The CITY shall implement measures to ensure its use of the parking area in front of BPW's offices is minimized during business hours.

#### **Section 14. General**

This MOU shall be governed by the laws of the State of Delaware.

If any provision of this MOU shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this MOU which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this MOU are hereby declared to be severable.

This MOU shall become effective upon the enactment of the above-referenced Charter Amendment.

#### **Section 15. Renegotiate/New Agreement.**

This MOU and all obligations hereunder shall be reviewed and renegotiated and the parties shall agree on a new agreement to apply going forward prior to July 1, 2026.

**IN WITNESS WHEREOF**, the parties have set their Hands and Seals the day and year and indicated above.

**THE CITY OF LEWES:**

\_\_\_\_\_(Seal)  
Theodore W. Becker, Mayor

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

\_\_\_\_\_(Seal)  
D. Preston Lee, President