

INTERGOVERNMENTAL AGREEMENT CONCERNING RAVINES OPEN SPACE  
STRUCTURES

This Agreement is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the Green Mountain Water and Sanitation District (“GMWSD”) and City of Lakewood (“Lakewood”) (together “the Parties”).

WHEREAS, Lakewood is a home rule municipality of the State of Colorado, County of Jefferson, and

WHEREAS, GMWSD is a Title 32 quasi-municipal corporation and political subdivision of the State of Colorado, wholly located within City of Lakewood and County of Jefferson, and

WHEREAS, Lakewood owns certain real property located within GMWSD, which real property is identified as Ravines Open Space, and

WHEREAS, GMWSD owns pipeline crossing the Ravines Open Space, which pipeline variously conveys sanitary sewage and treated water, which pipeline is supported by external structures where it crosses from one point of departure from the subsurface to a point of return to subsurface (each a “Structure” and together the “Structures”), and GMWSD has been granted an easement permitting the laying, installation, and maintenance of and access to such pipelines, but which easement is not in conformity with the existing pipelines, and

WHEREAS, the Structures have been used by members of the public as pedestrian bridges to cross the ravine for many years without any formal agreement between Lakewood and GMWSD or formal approval of such use from either, and

WHEREAS, both entities assert that the Structures are the property of and owned by the other entity as fixtures of Ravines Open Space, and

WHEREAS, Lakewood and GMWSD agree that the condition of ‘Middle Structure’ has deteriorated to such a degree that failure is imminent and the pipeline supported thereby is at risk of rupture (the “Risk”), and

WHEREAS, Lakewood and GMWSD agree that the other Structures are at risk of future deterioration such that failure may occur (the “Future Risk”), and

WHEREAS, a dispute has arisen between Lakewood and GMWSD concerning responsibility for the Structures, repair and maintenance and replacement of the same, and liability for the pipeline, the Structures and the use thereof (the “Dispute”), and

WHEREAS, the Parties agree that Lakewood will benefit from retaining pedestrian access by the public across some or all of the Structures and that GMWSD is not statutorily authorized to operate park facilities, and

WHEREAS, Lakewood and GMWSD are desirous of resolving the Dispute and ameliorating the Risk and Future Risk to the mutual benefit of each Party and the public,

NOW THEREFORE in consideration of the promises and stipulations contained in this Agreement, the Parties hereto agree to the following:

#### OWNERSHIP

1. Lakewood agrees to accept ownership of the North and South Structures (as identified by exhibit A - a map of the Ravines Open Space), responsibility for maintenance and operation of each Structure, and all potential tort liability from pedestrian use of each, any, and all said Structures, and all potential tort liability from any dangerous condition of its facilities located in a park or recreation area maintained by it, as such terms are defined by the Colorado Governmental Immunity Act.
2. GMWSD agrees to accept ownership of the pipelines and pipe supports attached to the Structures, responsibility for maintenance and operation of each, any, and all of the pipe supports attached to the Structures, and all potential tort liability from maintenance and operation of its water and sanitation facilities or dangerous condition of any water or sanitation facility, as such terms are defined by the Colorado Governmental Immunity Act.
3. GMWSD shall convey to Lakewood any and all of its ownership interests in the North and South Structures by mutually acceptable Bill of Sale, a form of which document is attached hereto as Exhibit B.
4. Lakewood and GMWSD shall identify Lakewood as the sole owner of the North and South Structures following execution of such Bill of Sale and neither shall dispute Lakewood's ownership.
5. Lakewood and GMWSD shall cooperate to establish and correct any easements necessary to accomplish the letter and spirit of this Agreement.

#### FUTURE RISK

6. Shall Lakewood determine that any Structure is approaching failure and requires extraordinary rehabilitation or replacement, Lakewood shall proceed in the following fashion:
  - a. Lakewood shall formally notify GMWSD of such determination in writing.
  - b. Lakewood shall include in its formal, written notification a statement of whether it desires replacement of the failing Structure to consist of a pedestrian-rated structure.
  - c. Lakewood shall execute a Bill of Sale conveying ownership of the properly identified Structure to GMWSD. Lakewood and GMWSD shall collaborate to prevent any pedestrian access or use of such Structure following this conveyance.

7. Costs for rehabilitation or replacement of any failing structure shall be allocated as follows:
  - a. GMWSD shall bear 50% cost of demolition and 100% cost of erecting a structure sufficient to support its pipelines.
  - b. Lakewood shall bear 50% of the cost of demolition of the failing structure.
  - c. Lakewood shall bear 100% of the excess costs of designing, engineering, and constructing a structure that is appropriate for pedestrian use over the base cost of the structure desired by GMWSD, if Lakewood desires such pedestrian use of the structure.
  - d. Neither Lakewood nor GMWSD shall be under any obligation to the other to erect any structure under this agreement, except as described herein.
  - e. Responsibility for demolition costs shall be independent of responsibility for the costs of designing, engineering, or constructing any replacement structure.
  - f. GMWSD shall be responsible for oversight of all aspects of demolition, including permitting.
8. Within six months of completion of the structure identified in paragraph 12 below, Lakewood agrees to adopt and enact erosion control measures in Ravines Open Space for the purpose of reducing deleterious effects of erosion to each of the Structures and to be solely and fully responsible for the costs thereof. Said erosion controls do not apply to the central channel of the Ravines Open Space.
9. Lakewood agrees to facilitate and not to hinder in any unreasonable fashion the demolition of any Structure, the erection of any replacement structure, or any associated work.

#### RISK

10. Lakewood and GMWSD agree and acknowledge that the Middle Structure is presently failing and in need of replacement. In accordance with the Future Risk provisions, Lakewood shall close the trails leading to the Middle Structure and erect signage prohibiting use of the trails or Structure immediately while GMWSD shall, if it desires, erect barricades. Lakewood shall convey any interest it may have in the Middle Structure to GMWSD by Bill of Sale at the sooner of erection of barricades on the Middle Structure or demolition of the Middle Structure. GMWSD is responsible for all aspects of demotion, including any required permitting.
11. Lakewood, by this provision, formally states that it does not desire replacement of the failing Middle Structure to consist of a pedestrian-rated structure.
12. GMWSD has contracted to design a support replacement for the Middle Structure and intends to barricade the Middle Structure immediately pending demolition. GMWSD shall demolish the Middle Structure and replace it with a structure, which structure shall be designed to prevent the public from using it as a bridge or in any other fashion.

13. GMWSD agrees that Lakewood is relieved of its obligation to contribute 50% of demolition costs with respect only to the Middle Structure.
14. Lakewood agrees to pay to GMWSD at the time of execution of this Agreement the sum of \$10,000 to reflect past use of the Structure(s).
15. Lakewood agrees to facilitate and not to hinder in any unreasonable fashion the demolition of the Middle Structure, the erection of the replacement structure, or any associated work. However, GMWSD or its agent shall not be relieved of any permitting requirements by and through Lakewood.

#### ALLOCATION OF MAINTENANCE COSTS

16. Lakewood shall be responsible for 100% of maintenance and operation costs of each, any, and all of the North and South Structures. GMWSD shall be responsible for 100% of maintenance and operation costs of each, any, and all of the pipe supports attached to the Structures.
17. If a Structure appropriate for pedestrian use and pipeline support pursuant to Paragraph 7, subpart c is constructed, maintenance and operation costs of such Structure shall be allocated according to Sections 1, 2, 6, and 7 of this Agreement.
18. If a Structure appropriate only for pipeline support pursuant to Paragraph 7, subpart a is constructed, maintenance and operation costs and ownership of such Structure shall be allocated solely to GMWSD, except that Lakewood shall not be relieved of its obligation to bear 50% of the cost of demolition of the failing structure thereby replaced.
19. Dispute
  - a. In the event that a dispute arises between the Parties regarding attribution or cause of any necessary maintenance or operation cost or regarding the necessity of any maintenance or operation cost, the Parties shall first engage in good faith negotiations regarding allocation and necessity of such costs.
  - b. If good faith negotiations do not resolve the dispute, each Party shall select and instruct a Professional Engineer to jointly select, with the other Party's selected Professional Engineer, a third neutral Professional Engineer.
  - c. The neutral Professional Engineer shall render an opinion regarding attribution and cause and necessity of the disputed maintenance or operation cost and allocate responsibility to the Parties, which opinion shall be final and binding upon the Parties.

#### REPRESENTATIONS AND WARRANTIES

20. The Parties warrant and represent as follows:

- a) Authority; Warranty of Authority. This Agreement has been duly executed and delivered by the Parties and constitutes a legal, valid, and binding obligation of the Parties, enforceable against them in accordance with its terms.
- b) Representation by Counsel. The Parties warrant and represent that they have been represented by counsel of their choice throughout the negotiations which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement, in its entirety, with their counsel, and that such counsel has approved it as to form.
- c) Complete Agreement. This Agreement shall constitute the entire agreement with respect to the subject matter hereof and there are no agreements, representations or warranties of any kind, except as expressly set forth in this Agreement. The Parties acknowledge that in executing this Agreement that they have relied solely on their own judgment, belief and knowledge, and except for representations expressly set forth herein, they have not been influenced by any other representation or statement of the other Party.
- d) Binding Effect. Except as may specifically be provided in this Agreement to the contrary, the terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon the Parties' heirs, estate, agents, legal representatives, successors, past and present agents, officers, directors, shareholders, employees, employers, partners, attorneys, insurers, and assigns. Except as otherwise expressly provided herein, this Agreement is not assignable without the prior written consent of each Party, and no payment to be made hereunder (if any) shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or other charge.
- e) Warranty of Non-Assignment. The Parties warrant and represent that the Parties have not assigned or transferred, nor purported to assign or transfer, to any person or any entity any claims, debts, liabilities, demands, obligations, damages, losses, causes of action, costs, expenses, and attorneys' fees subject to this Agreement.

## TERMS

- 21. Amendment. No modification or amendment of this Agreement shall be valid unless in writing and signed by each Party.
- 22. This Agreement is not intended, and may not be construed as intending, to establish a precedent or custom of dealing for any future cost-sharing agreements or allocation of responsibility between the Parties pertaining to any of real property or infrastructure. A Party's contribution under this Agreement creates no expectation that the Party is responsible for the maintenance or repair of any property or infrastructure not specifically identified herein.

23. Severability. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion of the Agreement will be deleted and the rest of the Agreement will remain in full force and effect.
24. Notices: All notices required or permitted under this Agreement shall be addressed as follows:
- a. As to Lakewood:  
City Clerk  
City of Lakewood  
480 S. Allison Pkwy  
Lakewood, CO 80226  
303-987-7000
  
  - b. As to GMWSD
25. Governing Law. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of Colorado.
26. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Parties or their officials, employees, contractors, or agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity that may be afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act.
27. No Public Dedication/No Third-Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third-party beneficiary interests are created or intended to be created by this Agreement.
28. No Party Deemed the Drafter. This Agreement is the result of negotiations between the Parties. This Agreement therefore shall not be construed against any particular party because of the involvement of that Party or its counsel in its preparation.
29. Counterparts. This Agreement may be executed by facsimile or other electronic communication and in separate counterparts, and all such counterparts taken together shall be deemed an original and all of which together shall be considered one and the same Agreement as of the Effective Date.
30. Actions for Breach. Either Party shall have a right to bring an action to enforce any of the Agreement's terms or provisions. In any such action, the court shall award reasonable attorneys' fees and costs to the prevailing party.

