

FIRST AMENDMENT TO  
FIRST AMENDED AND RESTATED  
BEEBE DRAW WASTEWATER SERVICE AGREEMENT

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This FIRST AMENDMENT TO FIRST AMENDED AND RESTATED BEEBE DRAW WASTEWATER SERVICE AGREEMENT ( “Amendment”) is effective as of this 15th day of June, 2021, by and between the SOUTH BEEBE DRAW METROPOLITAN DISTRICT (FORMERLY BROMLEY PARK METROPOLITAN DISTRICT NO. 1), a quasi-municipal corporation and political subdivision of the State of Colorado (“**SBDMD**”), the CITY OF BRIGHTON, a Colorado municipal corporation acting by and through its wastewater enterprise (“**Brighton**”), and the TOWN OF LOCHBUIE, a Colorado municipal corporation acting by and through its wastewater enterprise (“**Lochbuie**”), each individually referred to herein as a “Party” and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, Lochbuie and Brighton previously entered into the Intergovernmental Agreement dated January 17, 1991 (the “**Brighton/Lochbuie IGA**”), for the purpose of providing for their cooperative and joint efforts to develop, construct, install, operate, maintain and use wastewater treatment facilities capable of serving development in a portion of Beebe Draw known as the Beebe Draw Service Area, as defined in the Brighton/Lochbuie IGA; and

WHEREAS, the Parties and Bromley Park Metropolitan District Nos. 2-4 previously entered into that Beebe Draw Wastewater Service Agreement, dated November 4, 1997 (the “**1997 IGA**”), which amended and restated the Brighton/Lochbuie IGA; and

WHEREAS, the Parties previously entered into that First Amended and Restated Beebe Draw Wastewater Service Agreement, dated August 14, 2009 (the “**2009 WSA**”), which amended and restated the 1997 IGA; and

WHEREAS, all capitalized terms not otherwise defined herein shall have the meaning assigned them in the 2009 WSA; and

WHEREAS, in accordance with Section 3.14.1 of the 2009 WSA, both Brighton and Lochbuie acknowledged that, in accordance with the provisions of the 1997 IGA, SBDMD previously issued its Series 2007 Revenue Note in the original principal amount of three million, eight hundred and fifty thousand dollars (\$3,850,000) (the “**2007 Note**”), the proceeds of which were used to purchase PIF Credits to fund Improvements to the Treatment Plant; and

WHEREAS, in part, the 2009 WSA requires that Brighton and Lochbuie each impose and collect plant investment fees (“**PIF**” as defined in the 2009 WSA) on all new Sewer Taps to be served by the Treatment Plant and connected after the effective date of the 2009 WSA, and remit such PIF revenues to the Escrow Account, such PIF revenue having been pledged for repayment of the 2007 Note; and

WHEREAS, the Parties acknowledge and agree that the 2007 Note was paid in full in December 2017, and all 2007 Note Debt Service requirements are fully satisfied; and

WHEREAS, since the time that the 2007 Note was paid in full, Lochbuie and Brighton have continued to collect and pay the PIF revenues to the Escrow Agent as required by the 2009 WSA; and

WHEREAS, the Parties desire to amend the 2009 WSA as set forth in this Amendment to provide for the continued collection for the term of the 2009 WSA of the PIF Revenues on all new Sewer Taps to be served by the Treatment Plant, such PIF revenues to be delivered to Lochbuie to be held in separate account subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth below, the Parties do hereto agree as follows:

1. AMENDMENT OF PART D TO THE 2009 WSA. Part D of the 2009 WSA, encompassing Sections 3.10 through 3.15, shall be replaced and restated in its entirety with the following paragraphs:

**3.10 Plant Investment Fees (“PIFs”).** The actual cost of the design and Improvements described in section 3.3 above shall be funded by special charges called Plant Investment Fees (“PIFs”) which shall be collected by Brighton or Lochbuie, as provided herein, to be remitted to the Town of Lochbuie to be deposited in a segregated income-producing account (“PIF Account”) and disbursed solely for the purposes set forth in this Part D and for no other purpose. For the purposes of this 2009 WSA, the term “actual costs” shall mean all direct costs attributable to any previous or future Facility Expansion, including all costs and expenses associated with the acquisition of rights-of-way and other real property interests. Actual costs include direct engineering, legal, labor, materials and equipment expenses, and all direct payments to third parties, at cost; they include reasonable indirect costs actually and necessarily incurred in connection with a Facility Expansion and which are supported by reliable written evidence; they shall also include principal and interest payments and reasonable issuance costs on any revenue bonds issued to fund any Facility Expansion within this 2009 WSA, and retiring PIF Credits described in section **3.14**.

**3.11 Accounting; Reports.** On a monthly basis and so long as PIFs are collected and held pursuant to this 2009 WSA, Lochbuie shall forward to the governing bodies of Lochbuie, Brighton and SBDMD and to the Lochbuie Sewer Board a detailed statement and accounting of the income, investments, and withdrawals of money from the PIF Account for the immediately preceding calendar month. Any party shall have the right at any reasonable time to examine all of Lochbuie’s records concerning the PIF Account, and the details of said income, investments, and withdrawals. The PIF Account shall be audited each year by a qualified independent auditor in similar manner and coinciding with Lochbuie’s annual audit of its books and records pursuant to the provisions of C.R.S. §29-1-601, *et seq.*

**3.12 PIFs Payable per SFE Sewer Tap.** Except as provided in section **3.14** below for advance payment of PIFs, one PIF shall be due and payable to the PIF Account for each SFE Sewer Tap or fraction thereof attributable to all new Sewer Taps to be served by the Treatment Plant and connected after the effective date of the 2009 WSA, calculated according to the schedule set forth in Exhibit B of the 2009 WSA, at the time application is made for the Sewer Tap. No party to the 2009 WSA will approve or issue any authorization for any such Sewer Tap until the PIF attributable to it has been paid in full. The amount of the PIF as of January 1, 2018, shall be four thousand seven hundred and twenty five dollars (\$4,725.00) per SFE Sewer Tap, subject to increase by the Lochbuie Sewer Board, from time to time, in accordance with section **3.26.2**.

**3.13 Collection of PIFs - Collection of Utility Expansion Assessment.** Brighton and Lochbuie shall administer Sewer Tap sales and collect PIFs within their respective corporate limits and within the areas defined in section **3.9.5** above. On a monthly basis, the collecting municipality shall remit all PIFs collected by it to Lochbuie to be deposited into the PIF Account. Brighton and Lochbuie shall keep all records of Sewer Tap sales and PIF collections separately and distinctly from their other financial records and shall permit any party to inspect and copy such records upon reasonable notice. Nothing in the 2009 WSA or this Amendment shall limit either municipality from imposing such other and additional charges in connection with the authorization of a Sewer Tap as its governing body may prescribe, provided that, except for reimbursement charges imposed by either municipality pursuant to agreement with other customers in its service area, all such additional or other charges must be reasonable, must reflect actual costs, and must be imposed and collected on a uniform and non-discriminatory basis throughout the respective service area of such municipality in the Beebe Draw Service Area.

**3.14 Advance Payment PIF Credits.** Nothing in this 2009 WSA shall prevent or limit the right of any party hereto to make other advance payment in order to fund any of the design or Improvements described in section **3.3** above. Upon the deposit of any such advance payment by such party, that party shall be entitled to PIF Credits in the amount so paid in advance; *provided, however,* that if Brighton or SBDMD make any such advance payment, it (or they) shall be entitled to receive cash reimbursement for PIF Credits from the first PIFs collected after such advance payment, until the full amount of its advance payment is recovered, together with interest thereon at a rate equal to the greater of: (a) the average rate earned by Brighton on its investments generally in the twelve (12) month period next preceding the date of the advance; or, (b) the interest costs incurred by the paying entity in obtaining the funds so paid.

**3.15 Future Collection and Disposition of PIFs.** Following the full payment of all costs of completing any previous or future Facility Expansion, PIFs shall continue to be collected, and the proceeds thereof shall be held in the PIF Account for the development, acquisition and construction of future Facility Expansion(s) to serve property in the Beebe Draw Service Area, as may further be determined by the Lochbuie Sewer Board.

2. NO OTHER AMENDMENTS TO THE 2009 WSA. All other provisions of the 2009 WSA shall remain in full force and effect, unaffected by this Amendment.

3. COUNTERPART EXECUTION. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Amendment.

CITY OF BRIGHTON, COLORADO,  
a Colorado municipal corporation, acting by and through its wastewater enterprise

By: \_\_\_\_\_  
Greg Mills, Mayor

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Natalie Hoel, City Clerk

By: \_\_\_\_\_  
Lena McClelland, Acting City Attorney

TOWN OF LOCHBUIE, COLORADO,  
a Colorado municipal corporation, acting by and through its wastewater enterprise

By: \_\_\_\_\_  
Michael Mahoney, Mayor

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Cristal Sanchez, Acting Town Clerk

By: \_\_\_\_\_  
Maureen Juran, Town Attorney

SOUTH BEEBE DRAW METROPOLITAN DISTRICT,  
a Colorado quasi-municipal corporation and political subdivision

By: \_\_\_\_\_  
Robert A. Lembke, President

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Secretary/Treasurer

By: \_\_\_\_\_  
Michael Davis, SBDMD Legal Counsel