

**PARK AVENUE WATER LINE REPLACEMENT AGREEMENT BETWEEN THE
CITY OF LEAD AND LEAD DEADWOOD SANITARY DISTRICT NO. 1**

This Agreement for the replacement of the Park Avenue Water Line is entered into this _____ day of June 2024, by and between the City of Lead, 801 West Main Street, Lead, South Dakota 57754 (City) and the Lead Deadwood Sanitary District No. 1, 60 Crescent Street, Deadwood, South Dakota 57732 (LDS).

Whereas City and LDS entered into a Water Line Agreement, dated the 13th day of November 1995, wherein City agreed to accept ownership and responsibility for the maintenance and replacement of certain water lines from LDS.

Whereas one of the water lines the City agreed to accept was generally described in the agreement as an “existing six (6) inch pipeline [that] transmits treated water from a connection point in LEAD to the Deadwood supply point at the Deadwood tank in Pluma.”

Whereas the Lead “connection point” is defined in the agreement as “that point between the Homestake South Mill and Compressor buildings in East Lead, where such line connects to an eight (8) inch looped line.” And the Deadwood “supply point” is at the “Deadwood tank in Pluma”.

Whereas, a “six (6) inch line downstream of the Lead connection point distributes water to Deadwood and to Lead customers in the Pluma, Grizzly Gulch area.” The agreement provided that “[T]he parties acknowledge that and agree that SANITARY DISTRICT is replacing this six (6) inch line with a new eight (8) line, to be paid for by SANITARY DISTRICT.”

Whereas the entire six-inch (6”) line downstream of the Lead connection point was not replaced and there is currently a disagreement between the parties as to whether LDS should have replaced all of the six-inch (6”) pipeline between the Lead connection point and the Deadwood tank with a new eight-inch (8”) line.

Whereas the parties, in the spirit of compromise, have agreed that they shall equally share all costs of replacing a current six-inch (6") line with an eight-inch (8") line from the Lead connection point to a junction at which the six-inch (6") pipeline and a four-inch (4") pipeline are joined with an eight-inch (8") pipeline that transports water downstream to the Deadwood tank and a four-inch (4") pipeline that transports water downstream to the Homestake sand filter. The parties agree that LDSD will not be responsible for the costs associated with a pressure reducing station.

Now therefore, it is hereby Agreed as follows:

1. In full settlement of all claims between the parties related to this pipeline, the parties agree that they shall evenly split all costs of this Park Avenue line replacement project including engineering, material costs, change orders, and other costs of construction except for the engineering, material, and construction costs related to a pressure reducing station. City agrees that it will not award a contract for this project that exceeds the engineer's estimate by more than twenty percent (20%) without the prior consent of the LDSD Board of Trustees. City also agrees to provide LDSD with advanced notice of any change order requests and that LDSD shall not be responsible for payment of any change orders that are not required to replace the Park Avenue pipeline unless those change orders are approved by the LDSD Board of Trustees.

2. The City is solely responsible for the design, bidding, awarding, contracting, and overseeing the replacement of the Park Avenue line as the project Administrator and will bill LDSD on a monthly basis for its one-half (1/2) share of the ongoing costs and expenses of the project.

3. LDSD shall then remit payment to City within one (1) month of the date of billing.

4. No failure or delay in performance of the terms and conditions of this agreement by either party shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any acts of God, strikes, lockouts, wars, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension of its obligations.

5. This agreement constitutes the entirety of the understandings reached by the parties. There are no oral agreements that are in addition to this written agreement.

6. The parties agree that if a disagreement should arise concerning any of the terms of this agreement, they will submit their dispute to mediation; that they will mediate in good faith and upon a failure to do so will pay the attorney fees of the other party; and that they will not bring any legal action until such time that the mediator declares an impasse.

7. Time is of the essence.

8. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Any headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either party as the author or drafter of the Agreement. The use or misuse of pronouns will not be fatal to the applicability or enforcement of this Agreement.

9. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of South Dakota, without regard to the

