



AGENDA ITEM #5

REPORT TO CITY COUNCIL

Report Prepared by: Nancy Malecha

Date: August 20, 2019

Subject: Water & Wastewater Operations Services Agreement

Report: Attached is the Agreement for Water and Wastewater Operations Services between the Pine River Area Sanitary District (PRASD) and the City of Pequot Lakes for 2020-2024. The current agreement will expire on October 31, 2019; however, if this new agreement is signed, PRASD will allow the active contract to continue at the current rate until this new agreement goes into effect on 1-1-20. This Agreement has been reviewed by the League of Minnesota Cities on the City's behalf.

Council Action Requested: Council motion approving the Agreement for Water and Wastewater Operation Services with the Pine River Area Sanitary District for 2020-2024 in the amount of \$7,052 per month with future increases as defined in the Agreement.

Dear Mayor Tayloe and Council Members:

The Pine River Area Sanitary District (PRASD) is pleased to offer the City of Pequot Lakes a new contract for water and wastewater operations services. The current contract is set to expire on October 31, 2019. If a new contract is signed, the PRASD would allow the active contract to continue at the current rate until the new agreement goes into effect.

Over the last five years we (PRASD) have seen our labor requirements for this contract increase significantly, however, we have not adjusted the price during this term. What started as an estimated half time contract is now more like a full time responsibility for us. There are several reasons for this. As we have worked on and familiarized ourselves with your water and wastewater facilities, we have increased the amount of preventative maintenance we perform on a weekly, monthly, and annual basis. This helps avoid costly equipment repairs and emergency situations. Changes to the City's wastewater treatment operation, increased water meter-related maintenance, round-the-clock coverage during emergencies, and additional overall involvement in planning and construction phases of facility and system upgrades have also contributed to an increase in our presence in Pequot Lakes. Due to these increases in labor and responsibility, we are proposing new contract compensation in the amount of \$7052.00 per month with a term of January 1, 2020 through December 31, 2024.

We feel that our increased involvement in the City's utility services and excellent relationship with City Staff has resulted in a better, smoother-running operation that benefits City residents long-term. We look forward to working with the City of Pequot Lakes for another five years and beyond.

Thank you for your consideration and please feel free to contact me with any questions or concerns.

Andy Schwartz

Operations Manager

Pine River Area Sanitary District

2567 24th Ave SW

Pine River, MN 56474

(320) 232-5787

AGREEMENT FOR WATER AND WASTEWATER OPERATIONS SERVICES

THIS AGREEMENT (the “Agreement”) is entered into by and between the PINE RIVER AREA SANITARY DISTRICT, a Minnesota municipal corporation and governmental subdivision formed by the Joint Exercise of Powers in the Control of Water Pollution by and between the Cities of Pine River and Chickamaw Beach, and the Townships of Wilson and Barclay, Cass County Minnesota, (collectively the “CONTRACTOR”), 2567 24th Avenue SW, Pine River, Minnesota 56474; and the City of Pequot Lakes, a Minnesota municipal corporation, (the “CITY”), 4638 Main Street, Pequot Lakes, Minnesota 56472; (collectively the “Parties”).

WHEREAS, CITY owns a Minnesota Pollution Control Agency, (the “MPCA”) permitted wastewater treatment system and a Minnesota Department of Health, (the “MDH”) regulated water treatment system (collectively the “FACILITIES”); and

WHEREAS, CITY desires to contract for certified water and wastewater operator services at the FACILITIES; and

WHEREAS, CONTRACTOR, is a certified water and wastewater operator whose certificate class and number are Water Class B-13317, Wastewater Class B-63795264 & Type IV 40-63795264; and

WHEREAS, CONTRACTOR desires to contract with CITY to provide certified water and wastewater operator services to CITY at the FACILITIES on the terms and conditions contained herein.

NOW THEREFORE, it is mutually agreed between the Parties to contract for the services of CONTRACTOR as a State of Minnesota certified water supply systems and wastewater operator for CITY under the following terms and conditions:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is for the CONTRACTOR to provide water system and wastewater operator services to the CITY at the FACILITIES. CONTRACTOR hereby agrees to provide the services specified herein to CITY, and CITY hereby agrees and authorizes CONTRACTOR to provide such services within the municipal boundaries of the CITY in accordance with, and subject to, the terms and conditions of this Agreement. This Agreement is made pursuant to Minnesota Statutes, Section 471.59.

2. DUTIES AND RESPONSIBILITIES OF CONTRACTOR/CERTIFIED OPERATOR

2.1. The CONTRACTOR will maintain current water supply system and wastewater operator certificates and all applicable licenses from the MDH and MPCA.

2.2. The CONTRACTOR will be responsible for maintaining records, ordering chemicals, and performing all operation and maintenance for the FACILITIES. The CONTRACTOR will periodically inspect and supervise the operation of the CITY'S public water and wastewater supply system and perform such duties necessary to comply with State & Federal law, rules and regulations applicable to the FACILITIES, including completing and submitting all required reports to the State and Federal governments. Said duties shall specifically include:

2.2.1. Visit FACILITIES daily and perform routine inspection;

2.2.2. Perform day-to-day equipment maintenance;

2.2.3. Complete the daily manhole checks as listed on the critical manhole check list;

2.2.4. Maintain water/wastewater related record keeping, or as required pursuant to applicable law, rules or regulations;

2.2.5. Locate CITY water, sanitary sewer, and storm sewer utilities as part of State's Gopher State One Call Program;

2.2.6. Turn on/off curb stop valves as requested and perform valve maintenance and replacement on an as-needed basis;

2.2.7. Backwash water treatment plant media filter on a weekly basis;

2.2.8. Perform chlorine and fluoride testing on a weekly basis or as otherwise required by the MDH or as required pursuant to applicable law, rules or regulations;

2.2.9. Record hour meter readings at all CITY lift stations every Monday, Wednesday and Friday and perform regular preventative maintenance to the lift stations as noted in the monthly maintenance plan;

2.2.10. Inspect interior of water tower once per month;

2.2.11. Deliver delinquent water bill notices at the CITY'S direction and process water and sewer-related service orders on an as-needed basis;

- 2.2.12. Collect and submit all MDH and MPCA samples as required pursuant to applicable law, rules or regulations;
- 2.2.13. Complete the monthly water meter reads and any subsequent rereads;
- 2.2.14. Repair and/or replace meters and remotes, as needed or as directed by CITY. The parties understand and agree that this provision does not cover the CITY'S request, if any, for the CONTRACTOR to replace all meters and remotes as part of a meter replacement program, and that such requests are subject to paragraph 2.2.35;
- 2.2.15. Test run CITY's portable generator and sewer jetting machine and perform preventative maintenance on a monthly basis;
- 2.2.16. Prepare and submit on behalf of CITY all required MPCA and MDH monthly operations reports and annual reports as required by both regulatory agencies or as otherwise required by any other governmental agency, state or federal, having jurisdiction under applicable law, rules or regulations;
- 2.2.17. Pump water treatment plant reclaim tank solids to seepage basin once per year;
- 2.2.18. Turn water tower recirculating pump on in October and off in April as weather dictates;
- 2.2.19. Perform annual unidirectional fire hydrant flushing and semi-annual maintenance, lubrication, flag installation/removal or as required pursuant to applicable law, rules or regulations;
- 2.2.20. Review CITY's MDH Wellhead Protection Plan and schedule any required maintenance activities as needed;
- 2.2.21. Assist CITY staff with freeze run account creation and activation;
- 2.2.22. Prepare annual Water Consumption Form and submit as required by the MN Department of Natural Resources or as required pursuant to applicable law, rules or regulations;
- 2.2.23. Maintain wastewater pond dikes with weed killer on an as-needed basis;
- 2.2.24. Winterize wastewater spray irrigation system in October;
- 2.2.25. Jet CITY gravity sewer lines and flush dead ends on an annual basis;

- 2.2.26. Calibrate CITY-owned main lift station pumps on an annual basis;
- 2.2.27. Inspect CITY-owned lift station valve vaults on an annual basis and clean check valves if needed;
- 2.2.28. Arrange for annual backflow device testing at CITY's water treatment facility by a qualified vendor of CITY's choice, at CITY's direct expense and as authorized by CITY at CITY's direction and assist in development and implementation of the CITY's cross connection control plan;
- 2.2.29. Arrange for annual inspection of wells by a qualified vendor of CITY's choice, at CITY's direct expense and as authorized by CITY at CITY's direction;
- 2.2.30. Arrange for annual lift station inspection/repair by a qualified vendor of CITY's choice at CITY's direct expense and as authorized by CITY at CITY's direction;
- 2.2.31. Arrange for annual lift station wet well cleaning by a qualified vendor of CITY's choice at CITY's direct expense and as authorized by CITY at CITY's direction;
- 2.2.32. Respond to water/sewer complaints, notify CITY of water/sewer complaints, and arrange for repairs to address the water/sewer complaints by a qualified vendor of CITY's choice, at CITY's direct expense and as authorized by CITY in CITY's direction;
- 2.2.33. Respond to water/wastewater related alarms, notify CITY of water/sewer alarms, and arrange for repairs to address water/sewer alarms and equipment necessary to complete repairs by a qualified vendor of CITY's choice, at CITY's direct expense and as authorized by CITY in CITY's direction;
- 2.2.34. Attend up to four City Council meetings per year on an as-needed basis at the request of the City Administrator;
- 2.2.35. Other emergent water/wastewater tasks not included above will be handled on an as-occurring basis with notice to CITY. Such tasks shall be accomplished ONLY subsequent to specific direction by the CITY. The CONTRACTOR shall be compensated for these tasks at \$35.00 per hour for simple tasks, or for a negotiated amount per job for more complex tasks. All such tasks shall be in writing and approved by CITY prior to proceeding;

2.2.36. Provide evidence of and maintain in full force and effect municipal general liability insurance, automobile liability insurance, and workers' compensation insurance as provided in Section 7.1 of this Agreement. The CITY shall be named as an additional insured on the CONTRACTOR's municipal liability policy; and

3. **DUTIES AND RESPONSIBILITIES OF CITY**

3.1. CITY will provide all equipment, including safety equipment as required by law, necessary for the CONTRACTOR to properly operate the City's public water supply system in compliance with State and Federal requirements. Said duties and responsibilities of the CITY shall specifically include:

3.1.1. Provide CONTRACTOR, in writing, prior to the day services begin under this Agreement, the name of the CITY's authorized representative for this Agreement;

3.1.2. Maintain in full force and effect, in accordance with their respective terms, all guarantees, warranties, easements, permits, licenses and other similar approvals and consents received or granted to CITY as owner of the FACILITIES and components;

3.1.3. Be responsible for all expenditures and all costs necessarily required for the operation, maintenance and management of the FACILITIES;

3.1.4. At all times provide access to FACILITIES, towable Jetter machine, towable portable generator and crane truck (the "VEHICLES") to CONTRACTOR and its agents;

3.1.5. Be responsible for damage and liability to FACILITIES caused by flood, fire, Acts of God or other force majeure or misuse of property, unless such misuse of property was caused by the negligence or intentional misconduct of the CONTRACTOR;

3.1.6. Be responsible for all property, excise and other taxes assessed against the FACILITIES;

3.1.7. Mowing and trimming of grass and weeds at FACILITIES;

3.1.8. Snow removal at all CITY-owned lift stations, fire hydrants, water tower, water treatment plant, and wastewater treatment plant;

3.1.9. Maintain in full force and effect all policies of property and commercial general liability insurance pertaining to the FACILITIES and name CONTRACTOR as an additional insured;

3.1.10. Reimburse CONTRACTOR for the cost of all materials, supplies, and equipment used by CONTRACTOR in performing its work pursuant to this Agreement.

4. **TERM**

4.1. The initial term of this Agreement shall be for a period of five (5) years commencing January 1, 2020 and expiring December 31, 2024. Thereafter, this Agreement shall be automatically renewed for successive one-year terms (1) subject to the parties' agreement, prior to the expiration of the then-current term, regarding future compensation, and (2) unless written cancellation is received at least ninety (90) days prior to the expiration of the then-current term by either the CITY or the CONTRACTOR.

5. **TERMINATION**

5.1. Notwithstanding any provision of this Agreement, this Agreement may be terminated as follows:

5.1.1. In the event of a breach or default of a material term or condition contained in this Agreement, the non-breaching Party may terminate this Agreement by providing written notice to the other Party. The other Party shall have ninety (90) days from the date of such written notice to cure the breach or default to avoid termination of this Agreement. In the event of a health or safety emergency, in CITY's sole discretion, CITY may immediately implement temporary, alternative water or wastewater operator services, which shall not constitute breach or default of this Agreement.

5.1.2. Notwithstanding paragraph 5.1.1, this Agreement may be terminated with or without cause by either Party upon one hundred eighty (180) days written notice to the other Party. In the event of termination under paragraph 5.1.2, CITY shall be obligated to CONTRACTOR for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination.

5.2. If this Agreement is terminated for any reason, CITY shall notify the proper state agencies of cancellation or termination.

6. **INDEMNIFICATION / HOLD HARMLESS**

- 6.1. Each Party (referred to as the “Indemnifying Party” in this paragraph 6.1) agrees to defend, indemnify, and hold harmless the other Party, its employees and officials (the “Indemnified Party”) against any and all claims, liability, loss, damage, or expense, including reasonable attorney’s fees, caused by or resulting from any acts or omissions of the Indemnifying Party and/or those of the Indemnifying Parties’ employees or agents in the performance of or with relation to any of the obligations to be performed under this Agreement, except for such claims, liability, loss, damage or expense caused by the negligence or intentional misconduct of the Indemnified Party.
- 6.2. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

7. **INSURANCE**

- 7.1. Both Parties agree that each Party is currently insured and maintains appropriate levels of insurance including workers’ comp, sufficient general, auto, and professional liability insurance to cover its liability pursuant to the Minnesota Tort Claims Act, Minnesota Statutes, Section 466.04, as amended, and furthermore each Party agrees to maintain the current levels of insurance through the term of this Agreement.

8. **COMPENSATION**

- 8.1. CITY shall compensate the CONTRACTOR the sum of **\$7,052.00 per month** (the “Contract Price”) to serve as the certified water supply system and wastewater operator as specified herein for the initial term of this Agreement, plus such other amounts described in Sections 2.2.3.5, 8.2, and 9.3. Said sums shall be payable on a monthly basis, payments due within thirty (30) days of the CONTRACTOR submitting an invoice to CITY. **Future increases in the Contract price through the first five years of the Agreement shall be adjusted annually by the amount of change in the CPI-U (NSA) from May of the previous year to May of the current year. Adjustments to the Contract price after the initial five years of this Agreement shall be negotiated pursuant to section 4.1.**
- 8.2. CITY shall compensate CONTRACTOR at a rate of \$35.00 per hour for additional services provided by CONTRACTOR’s employees or agents that are authorized in writing by CITY.

9. MISCELLANEOUS

- 9.1. Voluntary and Knowing Action. The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- 9.2. Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- 9.3. Pre-approved Expenditure Limit: The CONTRACTOR may expend up to \$5000.00 per occurrence without authorization.
- 9.4. Sub-contractors. The CONTRACTOR shall not subcontract any of the services, which CONTRACTOR is to provide without the express written approval of CITY. The CONTRACTOR shall furnish all labor required to perform the services contemplated by this Agreement and will have full control and direction over the method and manner of performing those services.
- 9.5. Independent Contractor. The CONTRACTOR is expressly forbidden to act for CITY in any other capacity, or to represent itself in any manner as an agent of CITY, except under the terms hereof. During the term of this Agreement the CONTRACTOR, and the CONTRACTOR's employee(s), if any, shall be considered and act as an independent contractor and shall not be considered as employee(s) of CITY. No statement contained in this Agreement shall be construed so as to find CONTRACTOR or CONTRACTOR's employees to be an employee of CITY, and CONTRACTOR and CONTRACTOR's employees shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONTRACTOR acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONTRACTOR, and that it is CONTRACTOR's sole obligation to comply with the applicable provisions of all Federal and State tax laws.
- 9.6. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the CONTRACTOR and CITY regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter.

- 9.7. Severability. Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.
- 9.8. Assignment. Neither the CONTRACTOR nor CITY may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other.
- 9.9. Amendments. This Agreement may not be altered, extended, changed or amended except by written agreement signed by both Parties.
- 9.10. Controlling Law. This Agreement shall be interpreted in accordance with the substantive laws of the State of Minnesota.
- 9.11. Audit. The books, records, documents, and accounting procedures and practices of CITY and CONTRACTOR and other parties relevant to this Agreement are subject to examination by CITY, CONTRACTOR, and either Legislative Auditor or the State Auditor for a period of six years after the effective date of this Agreement.
- 9.12. Dispute Resolution. CITY and CONTRACTOR agree to negotiate all disputes between them in good faith for a period of sixty (60) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- 9.13. Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the Party affected by force majeure shall give written notice with explanation to the other Party immediately.
- 9.14. Compliance with Laws. CONTRACTOR shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the Facilities, programs and staff for which CONTRACTOR is responsible.
- 9.15. Data Practices. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota

Statutes, Section 13.01 et seq.

- 9.16. No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- 9.17. Patented Devices, Materials and Processes. If this Agreement requires, or the CONTRACTOR desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONTRACTOR shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Agreement, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- 9.18. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- 9.19. Notice. Any notice to be given hereunder by either Party to the other shall be in writing and may be effectuated by delivery of U.S. certified mail, return receipt requested. Notice hereunder shall be sufficient if properly addressed and made to:

City of Pequot Lakes

4638 Main Street

Pequot Lakes, MN 56472

Contact Person: Nancy Malecha, City Administrator

(218) 568-5222 (office)

(218) 568-5860 (fax)

Pine River Area Sanitary District

2567 24th Ave. SW

Pine River, MN 56474

Contact Person: Andy Schwartz, Operations Manager

218-587-2924 (office)

218-587-4954 (fax)

IN WITNESS WHEREOF, CONTRACTOR and CITY have caused this Agreement to be executed by the person authorized to act in their respective names on the below date of the latest signatory hereto:

CONTRACTOR:

PINE RIVER AREA SANITARY DISTRICT

By: _____
Marvin Ryan, Its Board Chairman Date _____

By: _____
Andy Schwartz, Its Operations Manager Date _____

CITY:

CITY OF PEQUOT LAKES

By: _____
James Tayloe, Its Mayor Date _____

By: _____
Nancy Malecha, Its City Administrator Date _____