



REQUEST FOR ACTION CITY COUNCIL

Agenda Date: 01/06/2025
Agenda Section: Consent Agenda

Department: Public Works

Agenda Item: Approve the 2025 Wastewater Operation Services Agreement for Lake Shore

Approval Required: Simple Majority Vote

BACKGROUND

The Wastewater Operation Services Agreement with the City of Lake Shore, as previously established, has been continuous until either party requests changes to its terms. Recently, both our Water/Wastewater Operations Manager, Andy Schwartz, and the City of Lake Shore's Administrator, Teri Hastings, proposed a few changes to the agreement.

The attached redlined version of the agreement reflects these changes, which were reviewed and approved by the City of Lake Shore's City Council at their most recent meeting.

Please review the attached document for further details. If you have any questions or concerns, I am happy to discuss them further.

FINANCIAL IMPLICATIONS

STAFF RECOMMENDATIONS

Staff recommends the City Council approve the 2025 Wastewater Operation Services Agreement with the City of Lake Shore.

COUNCIL ACTION REQUESTED

Motion to approve the 2025 Wastewater Operation Services Agreement with the City of Lake Shore.

AGREEMENT FOR WASTEWATER OPERATIONS SERVICES

THIS AGREEMENT ("Agreement") is entered into by and between the City of Pequot Lakes, a Minnesota municipal corporation ("Pequot Lakes"), 4638 Main Street, Pequot Lakes, Minnesota 56472, and the City of Lake Shore, a Minnesota municipal corporation ("Lake Shore") 8583 Interlachen Road, Lake Shore, MN 56468 (collectively the "Parties").

WHEREAS, Lake Shore owns and operates a Minnesota Pollution Control Agency ("MPCA") permitted public wastewater conveyance and collection system for the benefit of its citizens, the components and location of which are identified and depicted on Exhibit A, which is attached hereto and incorporated herein by reference (collectively the "Facilities"); and

WHEREAS, Lake Shore, desires to contract for certified wastewater operator services for Lake Shore's municipally owned Facilities; and

WHEREAS, Pequot Lakes employs a certified wastewater operator (the "Employee") whose certificate class and number are Class A-63795264 & Type IV 63795264; and

WHEREAS, Pequot Lakes is willing to contract with Lake Shore on the terms and conditions contained herein.

NOW, THEREFORE, it is mutually agreed by and between the Parties, as follows:

1. PURPOSE OF THIS AGREEMENT

- 1.1** The purpose of this Agreement is for the Employee to provide limited wastewater operator services to Lake Shore at the Facilities. Pequot Lakes hereby agrees that Employee will provide the services specified herein to Lake Shore and Lake Shore hereby agrees and authorizes Pequot Lakes to provide such services within its Facilities 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. CITY SERVICES

- 2.1** Pequot Lakes will maintain current wastewater operator certificates and all applicable licenses from the MPCA for the Employee during the term of this Agreement.
- 2.2** Pequot Lakes will visit the Facilities as needed in order to inspect and supervise the operations of Lake Shore's Facilities and to assist Lake Shore employees in performing such duties necessary to comply with State and Federal law, rules, and regulations applicable to the Facilities, including assisting Lake Shore employees with completing and submitting all required reports to the State and Federal governments, as applicable (the "Services"). These duties shall include the following:

- 2.2.1** Provide Lake Shore, in writing, prior to the day services begin under this Agreement with the name of Pequot Lakes' authorized representative (Operations Manager) for this Agreement.
- 2.2.2** Visit Facilities at a minimum of ~~3~~ 2 times per week to record hour meter readings at Lake Shore's duplex lift stations and inspect drain field sites for ponding.
- 2.2.3** Collect and submit all MPCA required samples on a timely basis.
- 2.2.4** Perform MPCA required quarterly tank inspections at both north and south treatment sites.
- 2.2.5** Prepare and submit on behalf of Lake Shore all required MPCA monthly, quarterly, and annual operations reports as required.
- 2.2.6** Test run Lake Shore's portable generator at a ~~Lake Shore~~ lift station ~~or city hall~~ for one-half hour, observe operation, and check all fluids, belts, and hoses on a monthly basis. ~~(weather permitting).~~
- 2.2.7** Inspect drain field drop boxes at both north and south treatment sites on a quarterly basis.
- 2.2.8** Inspect all Lake Shore duplex lift station valve vaults and exercise isolation valves on an annual basis.
- 2.2.9** Inspect Lake Shore gravity sewer line manholes on an annual basis.
- 2.2.10** Inspect Lake Shore force main air release manholes on an annual basis.
- 2.2.11** Inspect all Lake Shore STEP stations on an annual basis and arrange for pumping of tanks as needed by a qualified vendor of Lake Shore's choice, at Lake Shore's direct expense, and at Lake Shore's direction.
- 2.2.12** Serve as Lake Shore's Type 4 Operator, manage Lake Shore's annual land application of biosolids, and arrange for tank pumping at the north and south treatment sites and land application of biosolids at the MPCA-certified land application site by a qualified vendor of Lake Shore's choice, at Lake Shore's direct expense, and at Lake Shore's direction.
- 2.2.13** Insulate Lake Shore lift stations and septic tanks annually ~~or as needed~~ with Lake Shore providing frost blankets from November through April every year. Also, install heat lamps in valve vaults ~~if needed. of lift stations 1, 2, and 6, at the same time every year.~~
- 2.2.14** Respond to sewer complaints, notify Lake Shore of sewer complaints, and arrange for repairs to address the sewer complaints by a qualified vendor of Lake Shore's choice, at Lake Shore's direct expense, and at Lake Shore's direction.

- 2.2.15** Respond to wastewater related alarms, notify Lake Shore of sewer alarms, and arrange for repairs to address sewer alarms and equipment necessary to complete repairs by a qualified vendor of Lake Shore's choice, at Lake Shore's direct expense, and at Lake Shore's direction.
- 2.2.16** Perform equipment maintenance at Lake Shore's direct expense and at Lake Shore's direction.
- 2.2.17** Maintain wastewater-related record keeping.
- 2.2.18** Arrange for lift station inspection/repair by a qualified vendor of Lake Shore's choice, at Lake Shore's direct expense, and at Lake Shore's direction annually.
- 2.2.19** Arrange for lift station wet well cleaning by a qualified vendor of Lake Shore's choice, at Lake Shore's direct expense, and at Lake Shore's direction annually.
- 2.2.20** Locate Lake Shore sewer utilities by contacting Gopher State One Call Program on behalf of Lake Shore at Lake Shore's direct expense, and at Lake Shore's direction.
- 2.2.21** Perform septic inspections as needed at Lake Shore's expense and direction. These inspections will be conducted by the Wastewater Manager outside of their primary duties and within the scope of their licensing. Pequot Lakes will be compensated at the negotiated rate per inspection, or Lake Shore can hire outside services when the Wastewater Manager is unavailable.
- 2.2.22** Handle other urgent wastewater tasks as they arise at Lake Shore's expense and direction. These tasks will be done only after specific directions by Lake Shore. Pequot Lakes will be compensated at the negotiated rate per hour for additional tasks as outlined here.

3. DUTIES AND RESPONSIBILITIES OF CITY OF LAKE SHORE

- 3.1.** Lake Shore will provide all equipment, including safety equipment as required by law, necessary for Pequot Lakes, through the Employee, to provide the services at Lake Shore's Facilities in compliance with State and Federal law. Said duties and responsibilities shall specifically include, but are not limited to the following:
 - 3.1.1.** Provide Pequot Lakes, in writing, prior to the day on which services begin under this Agreement, the name of Lake Shore'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 Lake Shore as the owner of the Facilities and components.

- 3.1.3.** Be responsible for all expenditures and all costs necessarily required for the operation, maintenance, installation, management, equipment, materials, chemicals, repair, upgrade, and replacement of the Facilities; liability; and legal compliance of the same with applicable law, including but not limited to competitive bidding requirements pursuant to Minnesota Statutes, section 471.345.
- 3.1.4.** At all times provide access to the Facilities to Pequot Lakes and the Employee and its authorized agents.
- 3.1.5.** Be responsible for damage and liability to the Facilities caused by flood, fire, acts of God, or other force majeure, or misuse of property to the extent Lake Shore was negligent regarding the misuse of property.
- 3.1.6.** Be responsible for all property, excise, and other taxes assessed against the Facilities.
- 3.1.7.** Be responsible for all penalties, costs, and fines imposed by any regulatory agency having jurisdiction over the Facilities related to or arising from the operation of the Facilities.
- 3.1.8.** Maintain in full force and effect all policies of property and commercial general liability insurance pertaining to the Facilities and name Pequot Lakes as an additional insured.
- 3.1.9.** Provide personnel to perform all operations of the Facilities other than the services specified in this Agreement and have full control and direction over the method and manner of performing those operations of the Facilities.

4. TERM

- 4.1.** The term of this Agreement shall be for a period of one (1) year, commencing January 1, 2025. Unless terminated as set forth herein, the Agreement shall automatically renew for another year at the end of each calendar year.
- 4.2.** In the event Lake Shore hires another company to be its operator, Pequot Lakes will provide 10 hours of training services for the new Lake Shore employee on Facilities operations and duties at Lake Shore's expense at the rate of \$70.00 per hour.

5. TERMINATION

- 5.1.** Notwithstanding any provisions of this Agreement, this Agreement may be terminated as follows:
 - 5.1.1.** Either Party, in the event of the other Party's breach or default on a material term or condition contained in this Agreement, may terminate this Agreement by providing written notice to the other Party. In the event of a health or safety emergency, in Lake Shore's sole discretion, Lake Shore may immediately implement temporary, alternative wastewater operator services, which shall not constitute a breach or default of this Agreement.

Either Party shall not have the right to terminate this Agreement for breach or default unless the non-breaching or non-defaulting Party has first given the other Party written notice of the breach or default, and the other Party shall thereafter have fifteen (15) days from the date of such written notice in which to cure its breach or default to the non-breaching or non-defaulting Party's reasonable satisfaction before the non-breaching or non-defaulting Party can provide the above notice of termination; or

5.1.2. This Agreement may also be terminated by either Party for any reason or for convenience by either Party upon sixty (60) days' written notice to the other Party. In the event of termination under this clause, Lake Shore shall be obligated to Pequot Lakes for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination.

5.1.3. If Lake Shore is unable to find an alternative services provider through diligent, good faith efforts within the sixty (60) days written notice of termination period set forth in paragraph 5.1.2, then Pequot Lakes shall continue to provide the services set forth in this Agreement, at the agreed upon compensation hereunder as applicable at the time, plus for an additional charge of twenty-five percent (25%) of such amount, for sixty (60) days so that there is no interruption in services to Lake Shore. In good faith, Lake Shore shall attempt to obtain an alternative services provider as soon as practicable, but no later than the time period or permitted extension provided herein. In the event Lake Shore is unable to retain a service provider within the initial sixty (60) day written notice of termination period, Lake Shore shall provide Pequot Lakes written notice of the same at least ten (10) days prior to the expiration of the initial sixty (60) day written notice of termination period notifying Pequot Lakes that Pequot Lakes will need to continue to provide services pursuant to this Agreement at the additional charges for an additional sixty (60) days.

5.2. If this Agreement is terminated for any reason, Lake Shore shall notify the proper State and Federal agencies of the cancellation and/or termination of this Agreement, and shall, effective on the date of termination, be solely responsible and liable for the continued operation and maintenance of the Facilities.

6. INDEMNIFICATION AND HOLD HARMLESS

6.1. Each Party (hereinafter referred to as the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party, and its respective officers, directors, employees and members and agents, against any and all claims, liability, loss, damage, costs, judgments, or expenses, including reasonable attorney's fees, arising under the provisions of this Agreement. The indemnification provision of this paragraph shall not apply to damages or other losses proximately caused by or resulting from the willful misconduct of a Party. Under no circumstances, however, shall the Indemnifying Party or the other Party be required to pay on behalf of itself

or the other Party any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466, applicable to either Party. The limits of liability for all Parties hereunder may not be added together to determine the maximum amount of liability for either Party. The intent of this paragraph is to impose on the Indemnifying Party a duty to defend and indemnify each other subject to the limits of liability under Minnesota Statutes, Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the Parties and to permit liability claims against both Parties from a single occurrence to be defended by a single attorney. Nothing in this Agreement shall be construed to waive any immunities or limitations to which either Party are entitled under Minnesota Statutes, Chapter 466 or otherwise.

- 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 through the League of Minnesota Cities Insurance Trust (the "LMCIT") and maintains appropriate levels of insurance as required by the LMCIT, including sufficient 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 with the LMCIT through the term of this Agreement.

8. COMPENSATION

- 8.1.** Lake Shore shall pay Pequot Lakes the sum of \$3,514.23 per month (the "Contract Price") for the services specified herein for the term of this Agreement. Said sum shall be payable on a monthly basis, payments due within thirty (30) days of Pequot Lakes submitting an invoice to Lake Shore. Unless agreed to in writing by the Parties, future increases in Compensation shall be adjusted annually, effective January 1 of each year, by the amount of three percent (3%) or the change in the CPI-U (NSA) from June of the previous year to June of the current year, whichever is greater.
- 8.2.** Lake Shore shall pay Pequot Lakes at the rate of \$175.00 per septic inspection provided by Pequot Lakes' employees.
- 8.3.** Lake Shore shall pay Pequot Lakes at the rate of \$70.00 per staff hour for any additional services (the "additional services") provided by Pequot Lakes' employees that are authorized in writing by Lake Shore.
- 8.4.** Lake Shore shall pay all other charges, expenses, costs, and fees incurred by Pequot Lakes pursuant to this Agreement on a monthly basis, payments due within thirty (30) days of Pequot Lakes submitting an invoice to Lake Shore.
- 8.5.** Any late payments by Lake Shore under this Agreement shall include a late payment fee of eight percent (8%) of the applicable invoiced amount.

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 Signatures.** 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.** Employees may expend up to ~~\$1,000.00~~ \$2,500 per occurrence on behalf of Lake Shore without Lake Shore City ~~Council's~~ ~~Administrator's~~ authorization.
- 9.4. Sub-Contractors.** Pequot Lakes shall not subcontract any of the services which Pequot Lakes is to provide without the express written approval of Lake Shore. Pequot Lakes shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, Pequot Lakes must pay all subcontractors, less any retainage, within ten (10) calendar days of Pequot Lake's receipt of payment from Lake Shore for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- 9.5. Independent Contractor.** Pequot Lakes is expressly forbidden to act for Lake Shore in any other capacity or to represent itself in any manner as an agent of Lake Shore, except under the terms hereof. During the term of this Agreement Pequot Lakes, and Pequot Lakes' employee(s), if any, shall be considered and act as an independent contractor and shall not be considered as employee(s) of Lake Shore. No statement contained in this Agreement shall be construed so as to find Pequot Lakes or Pequot Lakes' employees to be an employee of Lake Shore, and Pequot Lakes and Pequot Lakes' employees shall not be entitled to any of the rights, privileges, or benefits of employees of Lake Shore, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. Pequot Lakes acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due to Pequot Lakes and that it is Pequot Lakes' sole obligation to comply with the applicable provisions of all Federal and State tax laws. Pequot Lakes shall furnish all labor required to perform the services and will have full control and direction over the method and manner of performing those services.
- 9.6. Entire Agreement.** This Agreement sets forth the entire agreement and understanding between Pequot Lakes and Lake Shore regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same

subject matter. This Agreement may not be modified or amended except by a writing signed by the Party against whom the modification or amendment is sought to be enforced.

- 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 Pequot Lakes nor Lake Shore may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.
- 9.9. Amendments.** This Agreement may be altered, extended, changed, or amended in writing by mutual agreement of the Parties hereto when dated and attached hereto without altering the other terms of this Agreement.
- 9.10. Controlling Law.** This Agreement shall be deemed to have been made and accepted in Cass County and interpreted in accordance with the substantive laws of the State of Minnesota without regard to choice of law or conflict of laws principles. Any dispute arising hereunder shall be brought in the District Court of Minnesota for Cass County.
- 9.11. Audit.** The books, records, documents, and accounting procedures and practices of Lake Shore and Pequot Lakes and other parties relevant to this Agreement are subject to examination by Lake Shore, Pequot Lakes, and either the Legislative Auditor or the State Auditor for a period of six years after the effective date of this Agreement.
- 9.12. Dispute Resolution.** Lake Shore and Pequot Lakes agree to negotiate all disputes between them in good faith for a period of thirty (30) 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, rebellion, insurrection, 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.** Pequot Lakes and Lake Shore shall each 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 each 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 Pequot Lakes desires, the use of any design, device, material, or process covered by letters, patent or copyright, trademark, or trade name, Pequot Lakes shall provide for such use by a suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with Lake Shore. If no such agreement is made or filed as noted, Pequot Lakes shall indemnify and hold harmless Lake Shore from any and all claims for infringement by reason of the use of any such patented design, 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 Lake Shore for any costs, liability, expenses and attorney's fees that result from any such infringement.
- 9.18. Mechanic's Lien.** Pequot Lakes hereby covenants and agrees that Pequot Lakes will not permit or allow any mechanic's or materialman's liens to be placed on Lake Shore's interest in the Facilities that are the subject of this Agreement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed in Lake Shore's interest, Pequot Lakes shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that Pequot Lakes may contest any such lien provided Pequot Lakes first posts a surety bond, in favor of and insuring Lake Shore, in an amount equal to 125% of the amount of any such lien.
- 9.19. 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.
- 9.20. 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 Lake Shore

8583 Interlachen Road

Lake Shore, MN 56468

Contact Person: Teri Hastings, City Administrator (218) 963-2148

City of Pequot Lakes

4638 Main Street

Pequot Lakes, MN 564 72

Contact Person: Angie Duus, City Administrator (218) 568-5222

IN WITNESS WHEREOF, Pequot Lakes and Lake Shore have caused this Agreement to be executed by the persons authorized to act in their respective names effective on the below date of the latest signatory hereto:

CITY OF PEQUOT LAKES:

By: _____
Tyler Gardner, Its Mayor

Date: _____

By: _____
Angie Duus, Its City Administrator

Date: _____

CITY OF LAKE SHORE:

By: _____
Andrew Stewart, Its Mayor

Date: _____

By: _____
Teri Hastings, Its City Administrator

Date: _____