

THIS AGREEMENT made as of this X day of XXX, 2017.

BETWEEN:

STURGEON COUNTY
(hereinafter referred to as the "County")

and

STURGEON SCHOOL DIVISION
(hereinafter referred to as the "SSD")

WHEREAS:

1. SSD is the owner of a waste water lagoon located in Namao, Alberta (the "Lagoon") on lands legally described as follows:

Plan: 7621497; Lot: B

(the "Lands");
2. The County has experience, skill and knowledge pertaining to the management, operation and maintenance of waste water lagoons;
3. The County has offered to manage, operate and maintain the Lagoon and, more particularly, to perform the services at the Lagoon on the terms and conditions herein set out; and
4. The County and SSD have reached an agreement pursuant to which the County will be responsible for all aspects of the management, operation and maintenance of the Lagoon by or on behalf of SSD in compliance with Alberta Environment License #0235925-00-00.

NOW THEREFORE in consideration of the mutual covenants and conditions herein contained, the County and SSD agree as follows:

1. Services and Term

- 1.1. The County is hereby granted the exclusive right to manage, operate and maintain the Lagoon on behalf of SSD throughout the Term hereof. Nothing herein shall vest in the County any rights of ownership in the Lagoon. The County shall manage, operate and maintain the Lagoon in compliance with Schedule A to this Agreement.
- 1.2. The initial term of this Agreement to manage, operate and maintain the Lagoon shall be for a one (1) year period beginning January 10 2017, (the "closing date") and ending December 31, 2017. The initial term of this Agreement may be extended by the mutual agreement of

the parties thirty (30) days before the end of the Term for five (5) successive additional one (1) year terms.

2. Scope of Services

- 2.1. The County will be responsible for managing, operating and maintaining the Lagoon at its sole expense, and shall do so in a manner that is in full conformance with all applicable laws, regulations, permits and permit conditions, including all of the plans, documents, operating plan and specifications and undertakings as are required to be provided by the SSD to obtain the necessary approvals from all applicable levels of government.
- 2.2. The County shall promptly investigate and report all accidents at the Lagoon and shall furnish the SSD with any information concerning the accidents or circumstances surrounding them as may be reasonably requested by the SSD.
- 2.3. The County shall promptly report to the SSD all complaints received with respect to its operation of the Lagoon.
- 2.4. The SSD may at any time conduct its own environmental and operations audit of the Lagoon in a manner so as not to interfere with the operation or the environmental integrity of the Lagoon.
- 2.5. The SSD shall not be called upon, to assume any liability, nor shall the SSD be liable, for the direct or indirect payment of any salary, wages, source deductions, remittances or other compensation to any personnel employed by, or acting as agents for the County, which personnel are in any way directly or indirectly performing any services to or on behalf of the County, unless the SSD has specifically in writing contracted for such liability and responsibility.

3. Labour and Equipment

- 3.1. The County shall furnish all labour, tools, and equipment necessary to operate the Lagoon and shall be responsible for all required maintenance thereof. Supervision by an experienced and qualified person shall be provided at all times when the Lagoon is in use or operation.

4. Compensation

- 4.1. The County shall be paid Thirty Three Thousand (\$33,000.00) Dollars per year, plus GST, for the performance of the County's obligations under this Agreement. That sum shall be paid in twelve (12) monthly payments of Two Thousand Seven Hundred and Fifty (\$2,750.00) plus GST, to be invoiced on a monthly basis.
- 4.2. Any and all capital expenditures deemed necessary by the County must be approved in advance in writing by the SSD and shall be the sole responsibility of the SSD.

- 4.3. Any sums of money due and owing by one party to the other hereunder shall bear interest at the rate of one (1%) percent per month, compounded monthly, commencing on the first day following when the said sum(s) should have been paid.
- 4.4. The SSD represents to, and covenants with the County as follows:
- a. The SSD is a statutory corporation, validly existing under the laws of the Province of Alberta, and the SSD has the requisite power and authority to conduct its business as presently conducted, and to own its properties and assets, and has all the requisite power and authority to execute, deliver and perform this Agreement.
 - b. The execution, delivery and performance by the SSD of this Agreement has been duly authorized by all necessary action of its Board, and does not and will not violate any provision of any existing law, rule, regulation, order, writ, judgment, injunction, decree, determination or award of any sort, or Governmental entity by which the SSD, or its property, is bound, and does not and will not, result in a breach, or constitute a default under any indenture, agreement, contract, lease or other instrument to which the SSD is a part, or by which the SSD or its properties may be bound. This Agreement constitutes a legal valid and binding obligation of the SSD enforceable against it in accordance with its terms.
 - c. Other than where the SSD, prior to the date of the execution of this Agreement has specifically advised the County in writing to the contrary, the Lagoon has, prior to the closing date, been constructed, operated and maintained by the SSD in accordance with all applicable laws, regulations, ordinances, permits and authorizations. The Lagoon is properly and legally zoned, and the SSD has not received notice of any continuing violation of any laws, regulations, ordinances or permits pertaining to zoning, safety, health, sanitation or the protection of the environment, and to the best of the SSD's knowledge, the operations conducted on the Lagoon have not caused any damage or injury to any person or property of any third parties.
- 4.5. The County represents to and covenants with the SSD as follows:
- a. The County is a statutory corporation, validly existing under the laws of the Province of Alberta, and the County has the requisite power and authority to conduct its business as presently conducted, and to own its properties and assets, and has all the requisite power and authority to execute, deliver and perform this Agreement
 - b. That, as and from the closing date, the County, subject only to determining that the SSD knowingly made a material misrepresentation as set out in Clause 4.4 hereof, shall be solely responsible and liable in accordance with the terms of this contract for the operation of the Lagoon. Nothing herein restricts any liability of the SSD if it can be shown that such past, existing, or future liability, was caused by the SSD.
 - c. The County will be responsible for carrying out all of the terms and conditions and obligations in the name of the SSD under all existing permits or approvals, any

modifications thereto, and any future permits or approvals which have been, or are, or will in the future, be issued to the SSD or to the County with respect to the Lagoon, subject at all times to the limitation with respect to governmental orders as set out in the "Force Majeure" provisions of Clause 11 herein.

- d. The County will not suffer or permit any action or omission which would result in the revocation or limitation of any permit or authority to operate the Lagoon.

5. Termination/Default

- 5.1. As used herein, "default by the County" shall mean failure of the County to comply with any term, covenant or condition of this Agreement which continues for a period of thirty (30) days after written notice thereof by SSD to the County, or in the case of a default incapable of being cured within thirty (30) days, the failure to commence such cure within thirty (30) days, or having commenced, the failure thereafter to diligently pursue the curing of such default to completion;
- 5.2. As used herein, "default by the SSD" shall mean failure of SSD to comply with any term, covenant or condition of this Agreement which continues for a period of thirty (30) days after written notice thereof by the County to the SSD, or in the case of a default incapable of being cured within thirty (30) days, the failure to commence such cure within thirty (30) days, or having commenced, the failure thereafter to diligently pursue the curing of such default to completion.
- 5.3. Upon the occurrence of an event of default (including the failure to cure within the time permitted herein), the non-defaulting party shall have the right, but not the obligation, by written notice given to the defaulting party to terminate this Agreement, and any such termination by the non-defaulting party shall be without prejudice to any claim it may have for damages or any other appropriate legal remedy available at law or under this Agreement.
- 5.4. Upon the occurrence of an event of default, and the non-defaulting party exercises its right to terminate this Agreement, a period up to 30 days may be required during which the defaulting party shall be required by the non-defaulting party to fulfil all ongoing obligations during such period.
- 5.5. All outstanding, continuing or future obligations of either of the parties hereto shall survive the termination of this Agreement including the obligation of either party to pay or repay any outstanding amounts of money required to be paid hereunder.
- 5.6. If the SSD terminates this Agreement by reason of the default of the County, the SSD shall have the right to take over possession of the Lagoon, improvements and equipment, and assume operation of the Lagoon and the County shall assist in any way possible to effect a smooth transition.

6. Indemnification

- 6.1. As and from the closing date the County agrees to, and does, assume all risks of loss or injury to any person, agents, employees, customers or other persons coming onto the Lagoon, and shall indemnify and save harmless and defend the SSD for and from all civil penalty, claims, damages, suits, judgments, losses, costs or expenses arising out of any omission or SSD of the County, related to the Lagoon and the carrying out of the terms and obligations hereunder.
- 6.2. As and from the closing date the SSD agrees to, and does, assume all risks of loss or injury to any person, agents, employees, customers or other persons coming onto the Lagoon, and shall indemnify and save harmless and defend the County for and from all civil penalty, claims, damages, suits, judgments, losses, costs or expenses arising out of any omission or SSD of the SSD, related to the Lagoon and the carrying out of the terms and obligations hereunder.
- 6.3. It is agreed for all purposes hereunder, that the County is and shall be an independent contractor and that the relationship created by this Agreement is not one of partnership or joint venture between the parties, and in all respects does not create a fiduciary relationship.

7. Negotiation

- 7.1. The SSD and the County shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement. Any controversy or claim arising out of, or related to this Agreement that remains unresolved after negotiations shall be exclusively settled by arbitration pursuant to the provisions of this Agreement.

8. Compliance with Laws

- 8.1. Prior to the closing date, the SSD represents and warrants that it has obtained and holds all necessary permits, approvals, and agreements for the operation of the Lagoon under this Agreement which shall either be in the SSD's name, or shall be jointly in the name of the SSD and the County.
- 8.2. After the closing date, and the turnover of the operations of the Lagoon from the SSD to the County as herein set out, the County shall thereafter, as and when required, be responsible for obtaining any permits or approvals or modifications thereto as may be required for the continued and intended operation of the Lagoon; it being agreed however that if such approvals or modifications can only be obtained by the SSD, then such permits or approvals shall be applied for by the SSD, on a timely and as required basis, at the sole cost and expense of the SSD.
- 8.3. The County covenants and agrees to supply unto the SSD as and when required, all information and documentation used by the County in any future application or permits, approvals or modifications thereto.
- 8.4. The County covenants and agrees to comply with all Federal, Provincial and local laws and regulations in effect or put into effect throughout the currency of this contract. including, but not specifically limited to, all applicable Federal and Provincial Statutes, all applicable municipal by-laws, all conditions attached to any approvals or permits issued or required

throughout the currency of this Agreement, including all future amendments thereto for new, applicable or relevant legislative requirements and all common law requirements.

9. Notices

9.1. Any notice, or other communication under this Agreement shall only be given by an authorized person of either of the parties, to the other party, and shall be deemed to have been received upon the most applicable of the following dates:

- a. The date of the mailing thereof as shown by the post office receipt if mailed to the other party hereto by registered or certified mail at the address set forth herein or the latest address specified by such other party in writing; or
- b. The date of the receipt thereof by such other party if not so mailed by registered or certified mail; or
- c. If hand delivered, the date of such delivery; or
- d. If sent by facsimile, the date upon which transmission is shown to have been made.

9.2. Notice shall be sent to:

SSD at:

Frank Robinson Education Center
9820 – 104 Street
Morinville, AB
Attention: Mr. Thomas Holmes

The County at:

9613 – 100 Street
Morinville, AB T8R 1L9
Attention: Mr. Jeff Yanew (Acting Manager, Utility Services)

10. Arbitration

10.1. In the event of a dispute arising between the parties hereto as to the interpretation, application, operation or alleged violation of this Agreement or any of the provisions hereof, such dispute shall be determined by arbitration in accordance with the following terms and conditions:

- a. The party desiring to refer a dispute for arbitration shall notify the other party in writing of the details of the nature and extent of the dispute.

- b. Within seven (7) days of receipt of such notice, the other party shall, by written notice, advise the party so desiring to refer the dispute to arbitration of the other party's position on all matters referred to in the initial notice including those for which the party admits responsibility and proposes to take remedial action and such party shall then take such remedial action.
- c. The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice which remain in dispute after the other party has advised the first party of its position on the matters in the initial notice.
- d. The County and the SSD shall, within seven (7) days of the establishment of the terms of reference pursuant to (c) above each appoint an arbitrator and the two arbitrators shall within seven (7) days of their appointment appoint a third party member to the Arbitration Committee to be known as the Chairman; provided further that if the two (2) arbitrators fail to appoint a Chairman, then both parties or either of them may apply to a Justice of the Court of Queen's Bench of Alberta to have the Chairman appointed.
- e. If either party fails to appoint an arbitrator within the seven (7) day period outlined in (d) above, then the other party may apply to a Justice of the Court of Queen's Bench of Alberta to appoint an arbitrator for the party failing to appoint an arbitrator.
- f. Within thirty (30) days of the establishment of the Arbitration Committee, or such further period as may be agreed upon by the parties, the Arbitration Committee shall resolve all matters and disputes included in the terms of reference.
- g. The decision of the majority of the Arbitration Committee shall be the decision of the Committee provided that if no majority decision is reached, the decision of the Chairman shall be the decision of the Committee.
- h. The decision of the Arbitration Committee shall be binding and final upon the parties hereto.

11. Force Majeure

- 11.1. The parties mutually covenant and agree that neither shall be required to perform any covenant or obligation in this Agreement or be liable in damages for the non-performance of same if the performance, or non-performance of the act required or prohibited is delayed, caused by, or prevented by force majeure. The term "Force Majeure" as employed herein shall mean acts of God; strikes, lockouts, and other industrial disturbances by persons other than the employees of the County; acts of the public enemy; orders of any kind of the government of Canada or the Province of Alberta or any municipal or military authority; natural disaster; civil disturbances; or inability on the part of any party hereto to carry out its obligations in this Agreement on account of any other cause or causes not reasonably within the control of such party; and any Federal, Provincial or Municipal legislation which might materially affect or restrict the operation of the Lagoon. Lack of financial capability shall not be deemed to be a force majeure. In the event the County cannot perform by

reason of force majeure, for the duration thereof, the SSD is authorized to operate the Lagoon in accordance with the provisions of Schedule A. If any force majeure continues for a period in excess of thirty (30) days and in a negative fashion materially affects the operation of the Lagoon, either party with thirty (30) days' notice may terminate this Agreement.

12. Legal Fees

- 12.1. In the event either party defaults in its obligations hereunder, the defaulting party agrees to pay taxable legal fees on a solicitor/client basis, and other costs and expenses incurred by the non-defaulting party in order to enforce the obligations of the defaulting party hereunder, or to enforce the rights and protect the interests of the non-defaulting party hereunder.

13. Term Unenforceable

- 13.1. If any term or provision of this Agreement is found to be unenforceable, the remainder of the Agreement, or the application of the term or provisions found unenforceable to parties and circumstances other than those to which it is held invalid or unenforceable, shall not be affected and the remainder of this Agreement shall continue in full force and effect.

14. Waiver

- 14.1. A waiver by any party hereto of strict performance by any of the other parties hereto of any covenant, condition or provision of this Agreement, shall not of itself constitute a waiver of any subsequent breach of such covenant, condition or provision or of any other covenant, condition or provision of this Agreement by such party nor shall such waiver entitle any other party to this Agreement to a similar waiver of such covenant, condition or provision or of any other covenant, condition or provision of this Agreement.

15. No Assignment

- 15.1. The rights of the parties hereto may not be assigned, or sub-let in whole, or in part, without the prior written consent of the other party, except the rights of the SSD hereunder with respect to the SSD's rights may be exercised and fulfilled by persons so designated by the SSD.

16. Whole Agreement

- 16.1. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and no prior, contemporaneous, or subsequent conversations, representations, agreements, or other matters shall be binding upon the parties unless written agreement(s) dated subsequent to the date of execution of this Agreement is signed by both of the parties.
- 16.2. Notwithstanding the provisions of this clause, the rights and remedies given to the parties in this Agreement, are in addition to any rights and remedies that the parties are given by statute, rule of law, or otherwise.

16.3. This Agreement shall be amended, changed, altered, modified or terminated only by written agreement signed by the parties hereto.

17. Effect of Headings

17.1. The paragraph headings used herein are for the convenience of the parties only and shall not limit, amplify, explain or modify any of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

STURGEON COUNTY

Per: _____

(c/s)

Per: _____

STURGEON SCHOOL DIVISION

Per: _____

(c/s)

Per: _____

Schedule “A”

1. Operations will comprise of weekly inspections which include; berm, inlet and outfall structure inspections, together with waste water level monitoring and recording.
2. Maintenance activities will include grass cutting to facilitate berm inspections and snow removal to facilitate access during winter months and will be arraigned and coordinated by the local superintendent on site.
3. The fencing, signage and gates will be maintained by the school superintendent on site to ensure safety and security from public access.
4. A Semi Annual Operations Report (SAOR) will be produced by the County and shared with the Sturgeon County School Division Superintendent. The SAOR will include inspection summaries, maintenance activities, Sampling activities and copies of Alberta Environment Reporting. All foreseeable capital requirements will be included in the SAOR together with any required changes to inspection and maintenance schedules.
5. All Alberta Environment & Parks (AEP) inspections will be managed by Sturgeon County Utilities with all result reporting shared with SSD. Any orders or actions that result from an AEP inspection will be managed by Sturgeon County Utilities.
6. Prior to the commencement of the Operating Agreement, SSD will be required to notify Alberta Environment & Parks of their intention to transfer the operating authority for the Sturgeon High School Lagoon over to Sturgeon County. If required, the County Utilities Department can assist in facilitating the paperwork required to make the transfer.