

CONTRACT OPERATOR AGREEMENT

This Agreement, made by and between the City of St. Francis and the City of Bethel, is made pursuant to the terms and conditions set forth herein:

- Scope of Work.** The City of Bethel engages the City of St. Francis to serve as Interim Wastewater Treatment Plant Operator and perform the services described on the attached Exhibit "A" which is incorporated by reference as if fully set forth herein. The City of St. Francis shall only provide contracted services for the wastewater facility (Pond system) and not collection system. The manner in which these services shall be performed and the length of time required to perform said services is in the sole discretion of the City St. Francis, but shall comply with MPCA guidelines on attached Exhibit "B". It is expressly understood that the City of St. Francis is an "independent contractor" and not an employee of the City of Bethel.
- Term of Agreement.** The term of this Agreement shall be for a period commencing on _____ and terminating when Bethel employs a person with a Class D Wastewater Certificate. Prior to such date, with reasonable cause, either party may terminate this Agreement pursuant to Section 5 listed below.
- Payment of Services.** City of Bethel shall pay the City of St. Francis per the Equipment and Staff fee schedule (Exhibit "C"). Bethel shall make payment to St. Francis within 30 days following submission of the invoice. Upon receiving corrected invoice from St. Francis, Bethel will make payment as described above. Bethel may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude Bethel from questioning the propriety of the claim. St. Francis reserves the right to offset any underpayment or disallowance of claim by reducing future services. In the event this Agreement is terminated before the completion of services, the City of Bethel shall pay to the City of St. Francis for services provided in a satisfactory manner, a sum based upon the actual time spent at the rate stated above.
- Equipment, Materials and Supplies.** It shall be the responsibility of the City of Bethel to provide all equipment, materials and supplies necessary for providing the services specified herein.
- Termination.** This Agreement may terminated with or without cause, by either party, upon 30 days written notice. Notice of termination shall be made by certified mail or personal delivery to the authorized agent of the party. Notice of termination is deemed effective upon delivery to the address of the party as stated in Section 5. Termination of this Agreement shall not discharge any liability, responsibility, or right of any party that arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination.
- Notifications.** Any alterations, variations, modifications, or waivers of provisions of this Agreement shall be valid only after they have been reduced to writing and signed by authorized representatives of either city. Bethel shall notify the MPCA at least 30 days

in advance of the contract termination if this Agreement is terminated prior to the expiration date.

7. **Indemnity.**

A. The City of Bethel agrees to defend, indemnify and hold harmless the City of St. Francis and or its Contractor(s) against any and all claims, liability, loss, damage or expense arising under the provisions of this Agreement and caused by the negligent acts or omissions of the City of Bethel or its employees agents, or Contractor(s).

B. The City of St. Francis agrees to defend, indemnify and hold harmless the City of Bethel against any and all claims, liability, loss, damage or expense arising under the provisions of this Agreement and caused by the negligent acts or omissions of the City of St. Francis or its employees, agents, or Contractor(s).

8. **Insurance.** The City of St. Francis will maintain adequate insurance requirements consistent with Minn. Stat. 466 and Minn. Stat. 176. City of St. Francis to provide evidence of coverage upon request by the City of Bethel.

9. **General Provisions.**

A. Entire Agreement. This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.

B. Assignment. The City of St. Francis may not assign this Agreement to any other person unless written consent is obtained from the City of Bethel.

C. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.

D. Nondiscrimination. In the hiring of employees to perform work under this Agreement, the City of St. Francis shall not discriminate against any person by reason of any characteristic or classification protected by state or federal law.

E. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Anoka County, Minnesota.

F. Ownership of Documents. All reports, plans, specifications, data, maps, and other documents produced by the City of St. Francis in the performance of services under this Agreement shall be the property of the City of Bethel.

G. Government Data/Privacy. The City of St. Francis agrees to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statutes, Chapter 13, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. The City of St. Francis understands that all of the data created, collected, received, stored, used, maintained or disseminated by the City of St. Francis in performing

those functions that the City of Bethel would perform is subject to the requirements of Chapter 13, and the City of St. Francis must comply with those requirements as if it were a government entity. This does not create a duty on the part of the City of St. Francis to provide the public with access to public data if the public data is available from the City of Bethel, except as required by the terms of this Agreement.

H. Waiver. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other Party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

I. Notices. All notices and other communications pursuant to this Agreement must be in writing and must be given by registered or certified mail, postage prepaid, or delivered by hand at the addresses set forth below:

Notice to City of Bethel: _____

Notice to City of St. Francis: _____

J. Force Majeure. Except for payment of sums due, neither Party shall be liable to the other or deemed in default under this Agreement, if and to the extent that Party's performance is prevented by reason of force majeure. "Force majeure" includes war, an act of terrorism, fire, earthquake, flood and other circumstances which are beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.

K. Savings Clause. If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.

L. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.

M. Dispute Resolution. The Parties shall cooperate and use their best efforts to ensure that the various provisions of the Agreement are fulfilled. The Parties agree to act in good faith to undertake resolution of disputes, in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the following procedures shall be used:

1. Whenever there is a failure between the Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The parties shall agree upon a mediator, or if they cannot agree, shall obtain a list of court-approved mediators from the Anoka County District Court Administrator and select a mediator by alternately striking names until one remains. The City of Bethel shall strike the first name followed by the City of St. Francis, and shall continue in that order until one name remains.
2. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the Parties may pursue any legal remedy.

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

City of Bethel, Minnesota

By: _____

Its Mayor

And: _____

Its Clerk

City of St. Francis

By: _____

Its Mayor

And: _____

Its Clerk

*Exhibit "A"

- Perform and provide technical training to the City of Bethel staff on treatment process, preventative maintenance techniques at wastewater facility.
- Perform monitoring, sampling, analyzing, and reporting as required by the Minnesota Pollution Control Agency (MPCA) with respect to the NPDES permit for the wastewater treatment.
- Train City of Bethel's staff as requested on the daily operations of the wastewater treatment facility at a rate set-fourth by this agreement.
- Provide a liaison between the City Bethel and the MPCA in matters relating to compliance with water quality and discharge requirements, and other liaison activities, as required.
- Certify the monthly wastewater monitoring and operation reports to the MPCA.
- Contract to be on-site as required by the MPCA.
- Provide daily operations of the wastewater treatment facility (except for holidays and weekends).
- Answer and provide wastewater operations assistance via in-person, telephone or email on an as needed basis to the City of Bethel Staff. Time spent will be charged on an hourly basis agreed to by both parties.

Operator Requirements: The minimum hour's set- fourth by Minnesota Pollution control agency below are assuming that the city of Bethel currently has an operator. The previous operator was at facility for about ten hours a week. The hours required below are the minimum St. Francis staff would be at facility but could be more.

*Exhibit "B"

- Wastewater Treatment Facility Contract Operator Guidelines – January 2018
Minn. Stat. §§ 115.71 – 115.77 and Minn. R. 9400 require that a wastewater treatment facility maintain at least one person that is certified in a class equal to or higher than the class of the system or facility. Additionally, the certified operator must have direct responsibility for the operation of the facility. Direct responsibility means the wastewater operator has full and active responsibility for the operation of a portion of, or all of, a facility or wastewater collection system. A city manager, superintendent of public works, or other administrative official shall not be deemed to have direct responsibility of a wastewater treatment facility unless they have obtained proper certification. It is allowable for a permittee to contract with a properly certified operator to meet this requirement provided the contract is submitted to the Commissioner of the Minnesota Pollution Control Agency (MPCA). In order to fulfill the certification requirement, the contract must include the following:
 - Certified operator name and certificate number .
 - Period covered by the contract and provisions for renewal .
 - Duties and responsibilities of the certified operator .
 - Duties and responsibilities of the permittee .
 - Provisions for notifying the MPCA 30 days in advance of termination if the contract is terminated prior to expiration date. .
 - The contract must specify the number of visits that the certified operator will make and length of visit. .
 - It is recommended that each visit be a minimum of two hours in length and at the frequency listed below. Each facility's management need is unique and each situation will be reviewed individually.
 - **It is emphasized that these hours do not include the time needed to actually complete facility operations and maintenance, only the hours to direct those activities.**

Facility Classification Number of Visits

- Class A- Three times per week
- Class B -Two time per week
- Class C- Onetime per week
- Class D -Onetime per month (December –February) Onetime every two weeks (March –November)

- If an unexpected event leaves a permittee without a certified operator, the permit holder is responsible for contracting with or hiring a certified operator as soon as possible. Please note that the permittee must notify the MPCA of a change of certified operator within 30 days.

*Exhibit "C"

EQUIPMENT AND STAFF USE	
One Ton Truck with Plow	\$55/Hour
Belos with Attachment	\$55/Hour
Crane Truck	\$60/Hour
Electric Generator	\$60/Hour
Grader	\$90/Hour
Zero Turn Mower	\$50/Hour
Pick Up Truck	\$40/Hour
Tandem Axle Truck	\$90/Hour
Tandem Axle Truck with Plow	\$110/Hour
Tool Cat/Skid Steer w/Attachments	\$80/Hour
Tractor with Loader or Attachments	\$60/Hour
Pay Loader - Hourly equipment rates DO NOT include the cost of the operator or cost of fuel and gas	\$90/Hour
Staff Time	Two Times Step 8 of Their Pay Grade

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