

THIS AGREEMENT entered into as of the 22 day of August, 2023.

BETWEEN:

THE TOWN OF ROCKY MOUNTAIN HOUSE

a municipal corporation governed by the *Municipal Government Act*,
R.S.A. 2000, c. M-26,
(the "*Town*")

- and -

CLEARWATER COUNTY

a municipal corporation governed by the *Municipal Government Act*,
R.S.A. 2000, c. M-26,
(the "*County*")

WASTEWATER TREATMENT CAPITAL FUNDING AGREEMENT

WHEREAS:

- A. The Town and the County are municipalities which wish to pursue mutual interests to benefit all users, visitors, stakeholders, and of the residents of the municipalities.
- B. The Town and the County both own and operate wastewater treatment facilities to serve their citizens, businesses, industrial and tourism facilities.
- C. The Town's wastewater treatment facility is convenient to discharge septage for the residents and businesses located in the County that are in close proximity to the Town.
- D. The Town is constructing a new wastewater treatment facility.
- E. The Town and the County agree that it is reasonable that the Town and the County each contribute to the new capital treatment infrastructure based on the percentage of usage and concentrate of sewage.
- F. The Town and the County agree that each Party's contribution to the new capital treatment infrastructure is established by the Septage Characterization and Distribution Study conducted by MPE in January 2023 (Project 4350-002-00) as reviewed and analyzed by the Town and County;
- G. The Town and County agree that maintenance and operational costs for the wastewater treatment facility shall be recovered through user fees which fees will be the same for users from both the Town and the County using the septage receiving station.

In consideration of the Town accepting septage from County residents at the new wastewater treatment facility and charging County residents the same user fees as it charges residents of the Town and in consideration of the mutual and other promises described in this Agreement, the sufficiency of which is irrevocably affirmed, the Parties agree as follows:

PART I DEFINITIONS

1. In this Agreement, the following words will have the described meaning unless expressly stated otherwise:
 - (a) "**Agreement**" means this Wastewater Capital Funding Agreement including the preamble, all attached Schedules and such amendments, extensions and renewals as may be evidenced in writing and executed by the Parties from time to time;
 - (b) "**Capital**" means tangible Capital assets as defined in the CICA Public Sector Accounting Board handbook, Section 3150 of a value exceeding \$5,000;
 - (c) "**Committee**" means the Intermunicipal Collaboration Committee as established in the Intermunicipal Collaboration Framework;
 - (d) "**County CAO**" means the individual appointed by County Council as the Chief Administrative Officer for the County or his delegate.
 - (e) "**County Council**" means the municipal council of the County;
 - (f) "**County**" means the municipal corporation of Clearwater County;
 - (g) "**Facility**" means the wastewater treatment facility being constructed by the Town;
 - (h) "**Force Majeure**" means any act of God, pandemic or unusual disease outbreak, major storms, civil disturbance, labour dispute or any similar major event or occurrence not within the control of a Party and which by the exercise of due diligence by such Party could not have been reasonably prevented, but lack of funds on the part of Party shall be deemed not to be a Force Majeure;
 - (i) "**Intermunicipal Collaboration Framework**" means the Rocky Mountain House – Clearwater County Intermunicipal Collaboration Framework dated April 2021 as amended from time to time;
 - (j) "**Party**" means the Town or the County;
 - (k) "**RWWTF**" means the existing Rocky Mountain House Wastewater Treatment Facility;
 - (l) "**Town**" means the municipal corporation of the Town of Rocky Mountain House;
 - (m) "**Town CAO**" means the individual appointed by Town Council as the Chief Administrative Officer for the Town or his delegate; and
 - (n) "**Town Council**" means the municipal council of the Town.

PART II REPRESENTATIONS AND WARRANTIES

2. The Town represents and warrants with and to the County and acknowledges that the County is relying on such representations and warranties as follows:
 - (a) the Town and County have received and reviewed a report from MPE Engineering Ltd. Town of Rocky Mountain House Septage Characterization and Distribution Study dated January 26, 2023, Project 4350-002-00 which upon review and analysis establishes that septage is responsible for 25.4% of capacity utilization of the RWWTF;

(b) the Town agrees to contribute seventy-four point six percent (74.6%) of the Capital costs of the Facility in relation to the Facility in accordance with this Agreement and to perform and otherwise adhere to all of its other obligations under this Agreement;

(c) the Town is responsible to pay Goods and Services Tax on its contribution to the Capital costs of the Facility and future Capital works in relation to the Facility; and

(d) the Capital costs of the Facility are to be determined after deducting the value of any applicable grants for the construction of the Facility.

The above representations and warranties made by the Town shall continue in full force and effect for the benefit of the County and, without further action or notice, be deemed to be true, complete and correct as at date of entering this Agreement.

3. The County represents and warrants with and to the Town and acknowledges that the Town is relying on such representations and warranties as follows:

(a) the County either received and reviewed the report from MPE Engineering Ltd. Town of Rocky Mountain House Septage Characterization and Distribution Study dated January 26, 2023, Project 4350-002-00;

(b) the County agrees to contribute twenty-five point four percent (25.4%) of the Capital costs of the Facility in relation to the Facility in accordance with this Agreement and to perform and otherwise adhere to all of its other obligations under this Agreement;

(c) the County is responsible to pay Goods and Services Tax on its contribution to the Capital costs of the Facility and future Capital works in relation to the Facility; and

(d) the Capital costs of the Facility are to be determined after deducting the value of any applicable grants for the construction of the Facility.

The above representations and warranties made by the County shall continue in full force and effect for the benefit of the Town and, without further action or notice, be deemed to be true, complete and correct as at date of entering this Agreement.

PART III TERM AND RENEWAL

4. Term and Renewal

4.1 The term of this Agreement is for a period of fifteen (15) years, commencing on October 15, 2023 and ending on October 14, 2038, subject to extension or earlier termination as set forth herein.

4.2 The Parties may agree to renew this Agreement at the conclusion of the term on terms and conditions as negotiated by the Parties.

5. Ownership of the Facility

5.1 The Town and the County agree that the Town will own the Facility and that the County does not receive any rights of ownership arising from its contribution to the Capital costs of the Facility.

PART IV OBLIGATIONS

6. Town

6.1 The Town and the County agree that the Town has the sole and unfettered discretion to make any and all decisions in relation to:

- (a) the operation of the Facility and the RWWTF;
- (b) set operational policies or bylaws for the Facility and the RWWTF; and
- (c) the need for Capital expenditures at the Facility.

6.2 The Town shall:

- (a) diligently pursue the construction of the Facility and future Capital works for the Facility during the Term;
- (b) pay any contractors for the Capital costs of the Facility; and
- (c) provide all written and verbal reports regarding the Capital costs as required in accordance with this Agreement.

If the Town fails to perform any of its obligations in this Agreement, the County may deliver written notice to the Town that such failure exists and the nature of such failure. The Town shall forthwith take all necessary steps to cure such failure. If the Town fails to cure the failure to the satisfaction of the County, acting reasonably, the County shall be entitled to pursue any and all remedies that may be available to the County pursuant to this Agreement, at law, equity or otherwise.

6.3 The County shall:

- (a) make payments in a prompt and diligent manner in accordance with the terms of this Agreement;
- (b) review all budgets, expenditure requests, and other matters requiring the County's approval in a prompt and diligent manner.

If the County fails to perform any of its obligations in this Agreement, the Town may deliver written notice to the County that such failure exists and the nature of such failure. The County shall forthwith take all necessary steps to cure such failure. If the County fails to cure the failure to the satisfaction of the County, acting reasonably, the Town shall be entitled to pursue any and all remedies that may be available to the Town pursuant to this Agreement, at law, equity or otherwise.

7. Funding

7.1 The Parties agree that:

- (a) the County is responsible to pay twenty-five point four percent (25.4%) of the actual Capital costs for the Facility. The County will fund ONE MILLION DOLLARS (\$1,000,000.00) on the effective date of this agreement; ONE MILLION DOLLARS (\$1,000,000.00) on June 30, 2024; and the

remaining balance of the final actual construction costs within 30 days of receiving the certificate of completion from the project engineer; and

- (b) the Town is responsible to pay seventy-four point six percent (74.6%) of the actual Capital costs for the Facility's proposed upgrades.

PART VI INTERMUNICIPAL COLLABORATION COMMITTEE

8. Appointment and Functions of the Committee

- 8.1 The Town and County agree that the Intermunicipal Collaboration Committee, as established by and further described in the Intermunicipal Collaboration Framework, shall act in an advisory role with respect to the administration of the Facility and this Agreement.
- 8.2 The mandate of the Committee is to:
 - (a) act in an advisory capacity only;
 - (b) no less than once per year, make recommendations to the Town and the County including, but not limited to:
 - (i) Capital budgets for the Facility, in sufficient time for Town Council and County Council to consider the recommendations as part of their annual budget approval process; and
 - (ii) potential percentages, upgrades and development for the Facility;
 - (c) perform and carry out such additional responsibilities and duties as may be delegated to it jointly by Town Council and County Council, which additional duties must be agreed to by both Councils.
- 8.3 The composition of the Committee shall be as prescribed in the Intermunicipal Collaboration Framework Agreement.
- 8.4 The governance, administration, and processes of the Committee shall be conducted in accordance with the Intermunicipal Collaboration Framework.

PART VII INDEMNITY, INSURANCE AND CONFIDENTIALITY

9. Indemnification

- 9.1 Subject to the Terms of this Agreement, the Town will indemnify and keep the County indemnified at all times from and against all losses that it may sustain in connection with any claim arising out of, or in the course of, this Agreement, including claims by one or more third parties, negligent act or omission of, willful misconduct of or breach of any of the express provisions of this Agreement by the Town or any person for whom the Town is responsible at law; except in each case to the extent caused (or contributed to) by the breach of any express provision of this Agreement by the County or any negligent act, omission or willful misconduct of the County or any person for whom the County is responsible at law.
- 9.2 Subject to the Terms of this Agreement, the County will indemnify and keep the Town indemnified at all times from and against all losses that it may sustain in connection with any Claim arising out of, or in the course of, this Agreement, including claims by one or more third parties, negligent act or omission of, willful misconduct of or breach of any of the express provisions of this Agreement by the County or

any person for whom the County is responsible at law; except in each case to the extent caused (or contributed to) by the breach of any express provision of this Agreement by the Town or any negligent act, omission or willful misconduct of the Town or any person for whom the Town is responsible at law.

- 9.3 The indemnities provided for under section 9.1 shall be limited to an amount in proportion to which the Indemnifying Party, its councillors, administrators, employees, agents, contractors or representatives are at fault or otherwise held responsible in law.

- 9.4 Sections 9.1 survive the termination or expiry of this Agreement.

10. **Insurance**

- 10.1 The Town shall obtain and maintain insurance for the Facility in an amount and form as a prudent municipality would obtain.

11. **Confidential Information**

- 11.1 Each Party acknowledges that, in connection with the performance of this Agreement, it may obtain access to certain information that is confidential to the other Party; and any information exchanged between the Parties pertaining to either Party's respective business processes, finances, plans, strategies, operations or personnel, and which is identified as confidential or would be understood by the Parties, exercising reasonable judgment, to be confidential (collectively, "***Confidential Information***"); provided that Confidential Information will not include information which:

- (a) is at the time of disclosure to the recipient or thereafter becomes generally available to the public other than as a result of a disclosure by the receiving Party in breach of this Agreement;
- (b) was made available to the receiving Party on a non-confidential basis from a person other than the disclosing Party prior to its disclosure to the receiving Party under this Agreement, as evidenced by the written records of the receiving Party, if such source is not prohibited from disclosing the information to the receiving Party by a confidentiality agreement with, or a contractual, fiduciary or other legal confidentiality obligation to, the disclosing Party; or
- (c) was known by the receiving Party prior to disclosure, as evidenced by the written records of the receiving Party, and was not subject to any contractual, fiduciary or other legal confidentiality obligation on the part of the receiving Party.

- 11.2 A recipient of Confidential Information of the other Party may use or disclose relevant aspects of that Confidential Information only to those of its councilors, administrators, employees, agents, contractors and representatives to the extent that such disclosure and use thereof is necessary for the performance of the Party's rights or obligations under this Agreement, or as required by law, and the disclosing Party shall take appropriate steps, whether by instruction, agreement or otherwise to ensure that such councilors, administrators, employees, agents, contractors and representatives keep such information strictly confidential and otherwise comply with the provisions of this Section 11.

PART VIII DEFAULT

12. **Performance by Either Party**

- 12.1 A Party shall be deemed to be in default under this Agreement if any of the following events occur (each of the following events to be referred to as an "***Event of Default***", the Party in default to be referred to as the "***Defaulting Party***" and the Party not in default to be referred to as the "***Non-defaulting Party***");

- (a) a Party fails to make a payment as required by any provision of this Agreement including failure to pay either a payment amount or an indemnity amount required to be paid pursuant to the terms of this Agreement (a “**Payment Default**”);
- (b) a Party fails to perform any of its obligations under this Agreement (which, for greater certainty, shall not include obligations resulting in a Payment Default if not performed) (each such event being a “**Performance Default**”).

13. Notice of Default

- 13.1 If a Party claims that there has been a Payment Default or Performance Default committed by or affecting the other Party, the Party making the claim shall give to the Party alleged to be in default a notice (hereinafter referred to as the “**Notice of Default**”). The Notice of Default shall specify and provide particulars of the alleged Event of Default.
- 13.2 In the event the alleged Event of Default is capable of being remedied, the Party alleged to be in default shall:
 - (a) have a cure period of fifteen (15) days after receipt of the Notice of Default with respect to a Payment Default;
 - (b) subject to Sections 13.2(c) and 13.3, have a cure period of thirty (30) days after receipt of the Notice of Default with respect to a Performance Default; or
 - (c) if a Performance Default is such that it cannot be reasonably remedied within thirty (30) days after receipt of the Notice of Default, have a reasonable period of time to cure the Performance Default provided that the Defaulting Party promptly commences and diligently continues thereafter to remedy the Event of Default.
- 13.3 If before the expiry of the later of the cure period (if any) referred to in Section 13.2 or the time to cure specified in the Notice of Default the Defaulting Party cures the Event of Default, the Default Notice shall be inoperative and the Defaulting Party shall lose no rights under this Agreement.

14. Remedies

- 14.1 In the event that a Notice of Default has been given and the Party alleged to be in default does not cure or remedy the Event of Default, the Non-defaulting Party shall have the following rights and remedies and may exercise any or all of them:
 - (a) in the case of a Payment Default, to charge the Defaulting Party Interest with respect to the unpaid amount until it is paid, calculated daily, regardless of whether the Non-defaulting Party has notified the Defaulting Party in advance of its intention to charge Interest with respect to the unpaid amount; or
 - (b) in the case of a Performance Default, the Non-defaulting Party may but shall not be obligated to, either directly or indirectly by engaging a third party or otherwise, as the case may be, do all such things in order to rectify such Event of Default. Prior to the Non-Defaulting Party engaging a third party, the issue must be referred to dispute resolution in accordance with section 15.1.

PART IX DISPUTE RESOLUTION AND FORCE MAJEURE

15. Dispute Resolution

- 15.1 Subject to any other provisions of this Agreement to the contrary, if any dispute or difference between the Parties arises under this Agreement, either Party may initiate the dispute resolution process in accordance with the Intermunicipal Collaboration Framework.

16. Force Majeure

- 16.1 If the Parties shall fail to meet their respective obligations under this Agreement within the time prescribed for the obligation and such failure is directly caused or materially contributed to by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such Party, provided however, in such event, such Party shall use its best efforts to put itself in a position to carry out its obligations hereunder as soon as reasonably possible.

PART X GENERAL

17. Governing Law

- 17.1 This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta.

18. Time of Essence

- 18.1 Time shall be of the essence of this Agreement.

19. Preamble

- 19.1 The Parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement and agree that same.

20. Notices

- 20.1 Any notice or other communication that either Party wishes to or is required to give to the other may be delivered, mailed by prepaid post, faxed or emailed as follows:

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| (a) To the Town:
Town of Rocky Mountain House
Box 1509
5116 50 Avenue
Rocky Mountain House, Alberta T4T 1B2
Attention: Chief Administrative Officer
Email: town@trmh.ca | (b) To the County
Clearwater County
Box 550
4340 47 Avenue
Rocky Mountain House, Alberta T4T 1A4
Attention: Chief Administrative Officer
Email: corporateservices@clearwatercounty.ca |
|---|---|

or to such other address as each Party may from time to time direct in writing.

20.2 Any notice delivered or sent is deemed received as follows:

- (a) if delivered by hand or by courier, it is deemed received by the other Party at the time of delivery to that Party or any person who appears authorized to receive such documents at the address identified in Section 20.1;
- (b) if sent by facsimile, it is deemed to be received by the other Party twenty-four (24) hours after the time shown on the facsimile transmission sheet that confirms receipt, unless it is sent on a Saturday, Sunday or legal holiday in Alberta, in which case it is deemed to be received by the other Party twenty-four (24) hours after the commencement of the next day that is not a Saturday, Sunday or legal holiday in Alberta;
- (c) if sent by registered mail, it is deemed to be received seven (7) days after mailing, subject to the intended recipient demonstrating that it was not, despite diligent efforts of the intended recipient, received within that time, in which case it is effectively delivered on the actual date of receipt; or
- (d) if emailed, it is deemed to be received on the first (1st) business day following the date of transmission unless the sender receives an out of office notification, in which case the notice is deemed to have been received on the first business day following the identified return to work day. For purposes of this section, "business day" means Monday to Friday, includes of each week, excluding days which are statutory holidays in the Province of Alberta.

21. **Headings**

- 21.1 The headings, captions, paragraph numbers, sub-paragraph numbers, article numbers and indices appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Agreement or any of its provisions.

22. **Relationship between Parties**

23. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto nor by any third Party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the Parties hereto, it being understood and agreed that none of the provisions contained in this Agreement nor any act of the Parties shall be deemed to create any relationship between the Parties hereto other than an independent service agreement between the two Parties at arm's length.

24. **No Authority**

- 24.1 Except as may from time to time be expressly stated in writing by the one Party, the other Party has no authority to assume or create any obligation whatsoever, expressed or implied, on behalf of or in the name of the other Party, nor to bind the other Party in any manner whatsoever.

25. **Agreement Entire Relationship**

- 25.1 This Agreement constitutes the entire agreement between the Parties and the Parties acknowledge and agree that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement.

26. **Further Assurances**

- 26.1 Each of the Parties agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

27. **Amendments**

- 27.1 This Agreement may not be altered or amended in any of its provisions, except where any such changes are reduced to writing and executed by the Parties.

28. **Waiver**

- 28.1 A waiver by either Party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not, of itself, constitute a waiver of any subsequent breach of such covenant or provision or any other covenant or provision of this Agreement.

29. **Counterparts**

- 29.1 This Agreement may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts shall constitute the one and same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.

30. **Statutory Reference**

- 30.1 Any reference to legislation in this Agreement includes:

- (a) in a reference to the legislation as amended or replaced; and
- (b) a reference to any regulations, bylaws or other binding instruments made under it.

31. **Unenforceability**

- 31.1 If any term, covenant or condition of this Agreement or the application thereof to any Party or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a Party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest permitted by law.

32. **Survival**

- 32.1 The Parties acknowledge and agree that the provisions of this Agreement, which, by their context, are meant to survive the termination or expiry of the Term, shall survive the termination or expiry of the Term and shall not be merged therein or therewith.

33. **GST Exclusive**

- 33.1 All amounts payable by one Party to the other will be inclusive of any goods and services tax ("GST"). The Town's GST number is R108129453RT0001 and the County's GST number is R107747289RT0001.

34. **Singular, Plural and Gender**

- 34.1 Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context requires.

35. **Binding Effect**

- 35.1 This Agreement shall enure to the benefit of and be binding on the Parties, their respective successors, and permitted assigns.

36. **Assignment**

- 36.1 This Agreement shall not be assignable by either Party without the express written approval of the other Party.

This Agreement is signed this 22 day of August, 2023, but made effective on the commencement date set out in section 4.1.

Town of Rocky Mountain House

Per: _____
Mayor

Per: _____
Chief Administrative Officer

Clearwater County

Per: _____
Reeve

Per: _____
Chief Administrative Officer

