

INDEMNITY AGREEMENT

THIS AGREEMENT made effective as of the 15th day of JANUARY, 2004

AMONG:


COUNTY OF VERMILION RIVER NO. 24
(hereinafter referred to as the "County")

- and -

TOWN OF VERMILION
(hereinafter referred to as "Vermilion")

- and -

VILLAGE OF KITSCOTY
(hereinafter referred to as "Kitscoty")

- and -

VILLAGE OF MARWAYNE
(hereinafter referred to as "Marwayne")

- and -

VILLAGE OF DEWBERRY
(hereinafter referred to as "Dewberry")

- and -

VILLAGE OF PARADISE VALLEY
(hereinafter referred to as "Paradise Valley")

WHEREAS:

- A. The County is the registered owner of the County Lands;
- B. Pursuant to the Lease, the Authority manages and operates waste transfer stations on the County Lands for the purposes of receiving, handling and disposing of waste;

C. The parties hereto wish to clarify the responsibilities of the parties relating to environmental issues which may arise as a result of the use by the Authority of the County Lands.

IN CONSIDERATION of the mutual and other promises described in this Agreement, the parties agree as follows:

1. **Definitions**

In this Agreement, each of the following words will have the meaning for that word described below unless expressly stated otherwise:

- (a) "Agreement" means this Indemnity Agreement including the preamble, all attached Schedules and all documents produced or delivered according to the terms of this Agreement;
- (b) "Authority" means the Vermilion River Regional Solid Waste Management Authority, being comprised of the County, Vermilion, Kitscoty, Marwayne, Dewberry and Paradise Valley, and reference thereto shall be deemed to include reference to all of the County, Vermilion, Kitscoty, Marwayne, Dewberry and Paradise Valley;
- (c) "Best Efforts" means, in relation to the performance of an obligation, efforts that are sensible and practical, and involve the exercise of reasoned and sound judgment, having regard to all of the relevant circumstances;
- (d) "Clandonald - Dewberry Lands" means lands legally described as "Lot 1, Block 1, Plan 952 5282";
- (e) "County Lands" means collectively the Paradise Valley Lands, the Kitscoty Lands, the Marwayne Lands, the Clandonald-Dewberry Lands, the Tulliby Lake Lands, and the Preston Lands;
- (f) "Kitscoty Lands" means lands legally described as "Lot 1, Block 1, Plan 952 4908";
- (g) "Lease" means the Lease between the County, Vermilion, Kitscoty, Marwayne, Dewberry and Paradise Valley respecting the County Lands dated the ~~7th~~ day of ~~DECEMBER~~, 2004;
- (h) "Marwayne Lands" means lands legally described as "Lot C, Plan 952 4769";
- (i) "Preston Lands" means lands legally described as "Lot 1, Block 1, Plan 962 3634";

- (j) "Tulliby Lake Lands" means lands legally described as "Lot 1, Block 1, Plan 962 3376";
- (k) "Paradise Valley Lands" means lands legally described as "part of NW-7-47-02-W4TH, as shown on road plan 5212 EO";

2. Term

The Term of this Agreement shall be for a term of twenty (20) years commencing on the date hereof and expiring on the 31st day of DECEMBER, 2027.

3. Option to Renew

This Agreement shall at the option of any party hereto, be renewable for successive twenty (20) year terms on a recurring basis upon the same terms and conditions contained herein, provided any party hereto notifies the other parties of its intention to renew by delivering written notice thereof to the other parties not later than ninety (90) days prior to the expiration of the previous term.

4. Covenants of the Authority

The Authority covenants and agrees to operate and maintain the County Lands throughout the Term for the purpose of recovering, handling and disposing of waste in compliance of all applicable laws, regulations or bylaws affecting the County Lands and for no other purposes whatsoever unless expressly authorized in writing by the County

5. Operation of Transfer Stations

The Authority shall operate and manage the transfer stations located upon the Lands in a manner consistent with the permitted use and in a safe, efficient and good workmanlike manner, and in substantially the same manner as a prudent municipal owner would operate and manage transfer stations in compliance with all applicable laws affecting the Authority, the County, and the Lands, and shall take all such action as appropriate to ensure that the Lands are properly and adequately supervised.

6. Liability, Damages and Mutual Indemnity

- (a) The County and Paradise Valley agree to indemnify and save harmless Vermilion, Kitscoty, Marwayne, and Dewberry their agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on a solicitor and own client basis, suffered by or incurred by Vermilion, Kitscoty, Marwayne, or Dewberry, their agents or employees, which are in any way connected with environmental liability arising from the use of the Paradise Valley Lands by the County or Paradise Valley and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the

County or Paradise Valley, their agents and employees, in respect of which either the County or Paradise Valley or their agents and employees are liable or otherwise responsible in law, provided that such indemnity, as between the County and Paradise Valley shall be apportioned between the County as to three-quarters ($\frac{3}{4}$) and Paradise Valley as to one-quarter ($\frac{1}{4}$).

- (b) The County and Kitscoty agree to indemnify and save harmless Vermillion, Paradise Valley, Marwayne, and Dewberry their agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on a solicitor and own client basis, suffered by or incurred by Vermillion, Paradise Valley, Marwayne, or Dewberry, their agents or employees, which are in any way connected with environmental liability arising from the use of the Kitscoty Lands by the County or Kitscoty and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the County or Kitscoty, their agents and employees, in respect of which either the County or Kitscoty or their agents and employees are liable or otherwise responsible in law, provided that such indemnity, as between the County and Kitscoty, shall be apportioned between the County as to two-thirds ($\frac{2}{3}$) and Kitscoty as to one-third ($\frac{1}{3}$).
- (c) The County and Marwayne agree to indemnify and save harmless Vermillion, Kitscoty, Paradise Valley, and Dewberry their agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on a solicitor and own client basis, suffered by or incurred by Vermillion, Kitscoty, Paradise Valley, or Dewberry, their agents or employees, which are in any way connected with environmental liability arising from the use of the Marwayne Lands by the County or Marwayne and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the County or Marwayne, their agents and employees, in respect of which either the County or Marwayne or their agents and employees are liable or otherwise responsible in law, provided that such indemnity, as between the County and Marwayne, shall be apportioned between the County as to two-thirds ($\frac{2}{3}$) and Marwayne as to one-third ($\frac{1}{3}$).
- (d) The County and Dewberry agree to indemnify and save harmless Vermillion, Kitscoty, Marwayne, and Paradise Valley, their agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on a solicitor and own client basis, suffered by or incurred by Vermillion, Kitscoty, Marwayne, or Paradise Valley their agents or employees, which are in any way connected with environmental liability arising from the use of the Clandonald-Dewberry Lands by the County or Dewberry and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the County or Dewberry, their agents and employees, in respect of which either the County or Dewberry or their agents and employees are liable or otherwise responsible in law, provided that such indemnity, as between the

County and Dewberry, shall be apportioned between the County as to two-thirds ($\frac{2}{3}$) and Dewberry as to one-third ($\frac{1}{3}$).

- (e) The County agrees to indemnify and save harmless Vermilion, Kitscoty, Marwayne, Dewberry and Paradise Valley, their agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on a solicitor and own client basis, suffered by or incurred by Vermilion, Kitscoty, Marwayne, Dewberry, or Paradise Valley, their agents or employees, which are in any way connected with environmental liability arising from the use of the Tulliby Lake Lands and the Preston Lands by the County or the Authority and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the County, its agents and employees, in respect of which the County and its agents and employees are liable or otherwise responsible in law.

7. Formation of Commission

- (a) The parties acknowledge that it is the intent of the members of the Authority to assign their rights and obligations under the Lease and this Indemnity Agreement to a Commission to be created subsequent to the date hereof which Commission will be comprised of the members of the Authority.
- (b) The parties agree to exercise their best efforts to cause the Commission to assume the rights and obligations of the members of the Authority under the Lease and to agree to be responsible for any environmental liability which may arise in connection with the County Lands subsequent to the formation of the Commission.
- (c) The members of the Authority, upon assumption of the Lease by the Commission, agree to indemnify and save harmless the Commission and its agents and employees from and against any and all damage, injury, loss, costs, causes of action, including legal costs on a solicitor and own client basis, suffered by or incurred by the Commission, its agents or employees, which are in any way connected with environmental liability arising from the use of the Lands by members of the Authority and which are caused either directly or indirectly or contributed to in whole or in part by any act or failure to act of the members of the Authority, their agents and employees, in respect of which any of the members of the Authority are liable or otherwise responsible in law in respect of any environmental liability arising prior to the date of the formation of the Commission and the assumption of the Lease by the Commission.

8. General

(a) Notices

Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing. Notice shall be served by one of the following means:

- (i) personally, by delivering it to the party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified in this subsection (iv) below; or
- (ii) by telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the earlier of:
 - (A) upon transmission with answer back confirmation if received within the normal working hours of the business day; or
 - (B) at the commencement of the next ensuing business day following transmission with answer back confirmation thereof; or
- (iii) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received three (3) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received;

Except as herein otherwise provided Notice required to be given pursuant to this Agreement shall be deemed to have been received by the addressee on the date received when served by hand or courier, or seven (7) days after the same has been mailed in a prepaid envelope by single registered mail to:

- (i) the County:

Box 69
Kitscoty, Alberta
T0B 2P0
Attention: County Administrator
Phone No.: (780) 846-2244
Fax No.: (780) 846-2716

(ii) to Vermilion:

5021 – 49 Avenue
Vermilion, Alberta
T9X 1X1
Attention: Town Manager
Phone No.: (780) 853-5358
Fax No.: (780) 853-4910

(iii) to Kitscoty:

Box 128
Kitscoty, Alberta
T0B 2P0
Attention: Village Administrator
Phone No.: (780) 846-2221
Fax No.: (780) 846-2213

(iv) to Marwayne:

Box 113
Marwayne, Alberta
T0B 2X0
Attention: Village Administrator
Phone No.: (780) 847-3962

(v) to Dewberry:

Box 30
Dewberry, Alberta
T0B 1G0
Attention: Village Administrator
Phone No.: (780) 847-3053

(vi) to Paradise Valley:

Box 24
Paradise Valley, Alberta
T0B 3R0
Attention: Village Administrator
Phone No.: 745-2287

(vii) to the Authority:

Box 69
Kitscoty, Alberta
TOB 2P0
Attention: Secretary-Treasurer
Fax No.: (780) 846-2832

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

(b) Governing Law

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.

(c) Time of Essence

Time shall be of the essence of this Agreement.

(d) Preamble

The parties hereby confirm and ratify the matters contained and referred to in the Preamble to this Agreement.

(e) Headings

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 provisions hereof.

(f) Relationship between Parties

Nothing contained herein 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 herein nor any act of the parties hereto 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.

(g) No Authority

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.

(h) Agreement Entire Relationship

This Agreement constitutes the entire agreement between the parties hereto 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.

(i) Further Assurances

Each of the parties do hereby 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.

(j) Amendments

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.

(k) Waiver

No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

(l) Counterparts

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.

(m) Statutory Reference

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated thereunder with all amendments made thereto and in force from time to time and any final judicial decisions interpreting the same, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

(n) Unenforceability

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.

(o) Survival

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.

(p) Remedies Generally

Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

(q) Payment of Monies

The parties acknowledge and agree that any payment of monies required to be made hereunder shall be made in Canadian funds and that any tender of monies or documents hereunder may be made upon the solicitors acting for the party upon whom the tender is desired and it shall be sufficient that a negotiable bank draft is tendered instead of cash.

(r) Singular, Plural and Gender

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 so requires and the provisions hereof.

(s) Binding Effect

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(t) Assignment

Neither party shall assign its interest in this Agreement, or any part hereof, in any manner whatsoever without having first received written consent from the other party which consent may be not be arbitrarily withheld.

(u) Requests for Consent

Each party shall provide any decision with regard to a request for consent in a timely manner.

**COUNTY OF VERMILION RIVER
NO. 24**

Per:

David White Reeve

Per:

D. Thomas County Administrator

TOWN OF VERMILION

Per:

Michael

Per:

Dallas

VILLAGE OF KITSCOTY

Per:

Aryle Frank

Per:

Wanda Hew

VILLAGE OF MARWAYNE

Per: *Rog Luby*

Per: *Jms*

VILLAGE OF DEWBERRY

Per: *A. Kennill*

Per: *Am Elliott*

VILLAGE OF PARADISE VALLEY

Per: *Kass*

Per: *Lennie Wilkie*