



## Water and Sewer Utility Acquisition Policy

## REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

### BOARD POLICY

**POLICY:** Water and Sewer Utility Acquisition Policy

**AUTHORITY:** Board Resolution dated August 15, 2019 .

#### **POLICY STATEMENT**

The Regional District of Okanagan Similkameen (RDOS) believes that essential services are best provided by government, where citizens can elect representatives interested in their well-being and will operate the service in the most effective and efficient manner possible. Further, potable water and sanitary sewerage systems are determined to be essential to a high quality of life and citizens should expect their local government to assist in acquiring and operating those systems where ratepayers to the system concur.

#### **PURPOSE**

To establish the policy and procedure for the acquisition of utilities.

#### **APPLICATION**

This Policy applies to Water and Sanitary Sewer systems in an electoral area of the RDOS operated by public or private owners serving citizens within the Regional District of Okanagan Similkameen geographic boundaries.

#### **DEFINITIONS**

**“BOARD”** means the BOARD of Directors for the Regional District of Okanagan Similkameen;

**“CAO”** means the Chief Administrative Officer for the RDOS, or a designated representative;

**“IMPROVEMENT DISTRICT” means**

- (a) the corporation into which the residents of an area are incorporated as an improvement or irrigation district under the *Local Government Act* or a former Act, or
- (b) the geographic area of the improvement or irrigation district corporation;

**“RDOS”** means the Regional District of Okanagan Similkameen.

**“SCADA”** means Supervisory Control and Data Acquisition

**“STAFF”** means an employee(s) of the RDOS

**“UTILITY”** means a water or wastewater system **RESPONSIBILITIES**

**The Board shall:**

- (1) Make such revisions, additions or deletions to the Water and Sewer Utility Acquisition Policy as may be required.
- (2) Approve any system acquisition

**The CAO shall:**

- (1) Review the Policy periodically and, if appropriate, make recommendations to the Board for amendments.
- (2) Implement the Policy
- (3) Make recommendations to the Board on the acquisition of a Utility meeting the terms and conditions herein.

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## 1.0 Guiding Principles

### **Water:**

The RDOS wishes to enhance the safety and delivery of clean drinking water to all of its citizens at equitable rates while ensuring affordable, reliable supply to all of its agriculturists. Access to clean safe drinking water is a foundational component of a sustainable healthy community.

### **Sewer:**

There is a benefit to treating human waste to an acceptable standard before we discharge them into our watersheds. The RDOS chooses to improve the protection of the environment and ensure public safety by collecting and treating sewage in a cost effective and environmentally superior manner.

### **Purpose of Adopting a Policy of Acquisition:**

There are a number of existing water and sewer systems within the RDOS that are struggling to meet environmental and public health standards. Many of these systems are old and do not meet increasing minimum provincial regulation or standard municipal design. System owners often find that they no longer have the financial ability or technical expertise required to meet current regulation. Further, these Utilities can have difficulty obtaining volunteers, expertise, insurance and are ineligible for provincial and federal grants.

In order to assist communities with these existing systems this policy has been developed to create process in which the RDOS can acquire these systems while enhancing the protection of public health, the public purse and the environment. The purpose of this policy is also to ensure that the RDOS does not accept undue liability and has the resources to assist. This policy and any standards herein are not applicable to new development.

### **Benefits:**

The RDOS offers numerous benefits to residents wishing to transfer ownership of their Utility. These include:

- Grants: Access to provincial and federal grants for capital improvements to the Utility are available to local governments. Grants can vary in value depending on the program and availability.
- Insurance. The RDOS carries up to \$40 million in liability insurance. This cost is shared amongst all of its various functions and is very affordable.
- Borrowing rates. The RDOS is part of the Municipal Finance Authority and typically has long term borrowing rates lower than any bank.
- Professional work force. The RDOS has a work force with professional engineers, engineering technologists, certified professional accountants, and Level 1 to 4 water and sewer operators. Because we own and operate a large number of water and sewer systems we can provide professional services and advice that would otherwise require the hire of consultants and/or contractors.
- Economies of scale. RDOS equipment, resources, telemetry and systems in place allow the shared use of common resources. This has the affect of reducing costs for any new users.
- 24/7/365 coverage. The RDOS has Staff available during normal office hours, but also has Staff on standby during weekends, holidays and at night. This means we are able to deliver service to any emergency 24 hours a day, seven days a week.

## 2.0 Process

### Use of this document:

A process has been outlined within this policy with each section described in more detail later within the body of the policy. It is expected that the applicant has read each section of the policy before any application is made. This policy and any standards herein are not applicable to new development.

### Process:

1. Before a Utility owner makes an application to the RDOS to transfer ownership of the Utility assets they should ensure that the *minimum eligibility criteria* have been met.
2. A Utility meeting the minimum eligibility criteria can apply to the RDOS by a simple resolution from the governing body or the shareholders of the Utility indicating desire to consider being transferred to the RDOS. This does not commit either the RDOS or the Utility owner to a transfer at this point. A *sample resolution* has been identified in section 3.0. As part of the application the proponent should confirm that they have met the eligibility criteria.
3. The RDOS will confirm that the eligibility criteria have been met, the expected timing for the following processes, the inclusion into any current work plan, and any mitigating circumstances concerning the urgency for a transfer. Depending on available funding and Staff availability, an application may not start within the calendar year in which the application has been made. As part of the report, *the* method of funding for an engineering assessment and financial, liability and asset report options shall be confirmed. Further, the method of public assent will be identified and the required levels of effort and costs, (see section 10.0). It is expected that a Staff capacity assessment, financial plan, public review process, transition plan and transfer agreement can be completed in-house with the results presented to the Board at the end of the process.
4. An *Engineering Assessment* of all works. An assessment of all infrastructure the RDOS is expected to own, operate and maintain shall take place in order to determine any required capital costs and additional operating costs.
5. A *Financial, Liability and Asset Report*. In order to understand any existing debt, reserves, assets, and any potential liabilities, an audit is required.
6. *Staff Capacity Impact Assessment*. With a finite number of employees, every Utility that the RDOS acquires will impact the capacity of Staff to respond to other existing systems. As part of the final report to the Board, an assessment will be provided that outlines the impacts that an acquisition will have on our ability to deliver current levels of service.
7. A *Financial Plan*. Financial plan(s) will be developed that will show the expected costs for the RDOS to operate and maintain the Utility proposed to be transferred and to provide any upgrades required to meet provincial and federal regulation/law.
8. A *Transition Plan* (if necessary). The governance, Staffing and transfer of the Utility assets over a set period of time will be developed if deemed necessary. The intent is to ensure a transition that is respectful of the existing systems, Staffing and the wishes of local residents.

9. *A Public Review Process.* A plan to review the findings from our engineering assessment, audit, potential costs, and benefits of becoming an RDOS function will be shared with the public. The plan will include a public assent process for the creation of an establishment bylaw and borrowing (if needed) that is acceptable to the province.
10. *Transfer Agreement.* A transfer agreement must be signed by the owners of the Utility if the Utility is not an Improvement District. In the case of an Improvement District assets are transferred to the RDOS by an Order in Council. Within any transfer agreement all assets will be transferred to the RDOS for \$1 and will not be contingent on any development rights. A sample agreement has been provided in Appendix A.
11. *Final Board Approval.* Once all of the above plans, assessments and agreements are in place. Staff will review the above information with the Board to confirm whether or not they wish to proceed with the transfer of the Utility. The Board will have the final approval on any Utility acquisition.

### 3.0 Minimum Eligibility Criteria

Before an application to transfer a Utility is made the following criteria must be met:

1. An applicant must not have any fines or law suits pending or underway against the Utility. Any liability that is assumed by the RDOS with the transfer may affect the entire RDOS, so the applicant must declare and confirm that they are not aware of any potential or current legal action against the Utility.
2. The RDOS must be able to respond to an emergency within 1 1/2 hrs after the call out. Failure to respond to an emergency call out within a timely fashion is a risk to the residents of the Utility and a liability to the RDOS.
3. The governing body or owner of the Utility must be willing to agree to transfer all assets, reserves and water rights to the RDOS at the end of the application process. The applicant is expected to sign a transfer agreement similar to the attached for a cost of \$1 and will not be contingent on any development rights.
4. The Utility must have all of the valid licenses and permits in place required for the RDOS to own, operate and maintain the system. For example, a water system must have all ground water or surface water permits before the RDOS will take on the ownership of a Utility. These licenses must be transferable to the RDOS.
5. Due to the effort, resources and expense the process, assessment, audits and studies required to review an application, should an application for Utility transfer be rejected either by the RDOS or the public, the owner of the Utility must not reapply within five years of the date of the original application.
6. This policy is for existing Utilities only. Any transfer of Utilities for new development will have a different process and standards to follow.

## Sample Application Resolution

Therefore, be it Resolved:

*THAT the (Name of the Utility) intends to dissolve the (Name of the Utility) and transfer the assets of the utility to the RDOS, on such a date that it is appropriate to transfer all operations, assets and any liabilities to be assumed by the RDOS.*

## 4.0 Method of Funding an Application

Funding will be required to pay for an Engineering Assessment, a Financial Audit, Staff time, a public assent/ public review process and any costs to transfer assets, rights of way, bylaws and files to the RDOS. Options to pay for the above include: the Electoral Area Rural Projects Funds, the applicant applying for the Utility transfer provides funding, a provincial governance review grant up to \$20K that the RDOS will apply for (not available for privately owned utilities). Should a public assent process be approved by the ratepayers, costs may be recovered by the RDOS in future budget years depending on available funds. The grant from the Province is only available if the transfer is successful and the application is for the transfer of an Improvement District. A provincial grant application is not automatically approved nor is there a set amount available.

## 5.0 Engineering Assessment

As part of the Water and Sewer Utility acquisition policy the RDOS will hire a consultant to assess all of the Utility's existing infrastructure in order to determine compliance with federal and provincial legislation and engineering design norms. The engineering assessment shall determine the capital and operational costs required to meet the aforementioned minimum requirements. The study will also determine the longer term capital and operational cost required to meet municipal standards and those of the RDOS's development and regulatory bylaws. Any infrastructure encroachments or trespasses will also be identified and included in the longer term capital plan. These longer term costs should include asset replacement and be consistent with the RDOS asset management plan. Infrastructure that has reached the end of its serviceable life should be included in the works identified as the minimum upgrades or requirements.

The RDOS recognizes that older Utility systems may have been designed and constructed to previous, lower standards, may not meet current municipal and fire protection standards, and may be nearing the end of their serviceable life. Over time, as funding becomes available, the RDOS will bring all existing Utility systems it acquires into compliance with the design standards and construction specifications outlined in the appropriate RDOS bylaws and prioritize the works through future master plans and asset management plans.

All Utility systems will have SCADA telemetry systems installed on all of its core infrastructure. This is to ensure responses to emergencies are in a timely, safe and efficient manner. These include structures such as wells, chlorination stations, pump stations, lift stations, booster stations, and water and waste water treatment facilities.

The minimum requirements used to create a financial plan will be those requirements needed to meet all provincial and federal regulation, operating certificate, health, safety, and environmental standards. Further, it will include any upgrades required to meet the minimum operational standards. These include SCADA, telemetry, alarms, failed infrastructure and reasonable operating conditions. These



upgrades will form the basis of a financial plan and borrowing bylaws that will be presented to the public. Further, the RDOS will review the potential for grant funding for any required upgrades.

The RDOS will discourage point-of-use or point-of-entry (to an individual dwelling) devices as a means of treating water supplied by a water supply system. The RDOS will not take on responsibility for existing point-of-use or point-of-entry systems in a candidate water system. These will need to be decommissioned or looked after by the property owner. Boiling water is not deemed acceptable as a long term water treatment solution for any system.

Any existing sewage system must be compliant with the existing Liquid Waste Management Plan, if any.

The RDOS will discourage pump-and-haul as an approach to removing sanitary sewerage from community Utility systems for treatment and disposal at another location.

The Utility must have all of the valid licenses and permits in place required for the RDOS to own, operate and maintain the system. The review will confirm that all appropriate licenses are in place required to operate the Utility. For example, a water system must have all ground water or surface water licenses in place and any dam or water system structure must have appropriate licenses. These licenses must be transferable to the RDOS.

#### 6.0 Financial, Liability and Asset Report

In order to understand existing debt, reserves, assets and any potential liabilities, specified procedures will be undertaken by an audit firm resulting in a special report the RDOS can rely on. Regional Districts have service areas for all of their functions. This means that the assets and reserves will be used for the service and service area. It also means that any liabilities, fines and debts that are to be assumed by the RDOS will also remain with any newly created service area.

It is expected that there will be no material change in assets, debts or liabilities from the last audited year-end financial statements of the Utility to the time that the Utility assets are transferred to the RDOS.

The RDOS or their agent will review working papers, audits, bank statements, etc. required to provide the financial position of the Utility. The applicant is expected to cooperate to this end. Further, the applicant will permit the RDOS or their agent to contact the Utility's insurer to confirm that there are no existing or pending lawsuits. The RDOS may also conduct court registry searches in this regard.

A list of physical assets to compliment the Engineering Assessment shall be provided and roughly estimated in replacement value. These may include lands and investments that are owned by the Utility but are not directly tied to the Utility infrastructure (i.e. public works building/ office).

#### 7.0 Staff Capacity Impact Assessment

While any Utility is expected to have full cost recovery, the addition of any Utility to the RDOS will have an impact on the workload of existing Staff and the capacity of the organization. Depending on the size and complexity of the Utility, the increase in workload may or may not require additional Staff. In some cases, alternative service delivery mechanisms may be considered. In order to assess the impacts to the organizational capacity of the RDOS, Staff will estimate the additional Staff hours required to operate, maintain, and administer the newly acquired Utility and then convert these hours to Full Time Equivalent (FTEs). While the FTE may be fractional, it will be very difficult if not impossible to hire

professional part time Staff and any additional workload may trigger the need to increase Staffing levels or decrease existing workload in other areas. Any FTE amount over one should result in the hire of Staff upon the transfer of the Utility to the RDOS. All costs attributable to a Utility will be charged to that Utility service area.

#### 8.0 A Financial Plan (with and without grants)

A financial plan will be developed that identifies expected operational and capital costs required to meet standard operating procedures and the minimum upgrades stipulated in the engineering assessment and address debts, assets and reserves identified in the financial assessment. The budget will consider existing reserves and debt. Should upgrades be required, an option with senior government grants will be developed if grant funding is applicable. Further, a borrowing bylaw will be prepared for any required upgrades as part of any public assent process. All expected costs will be provided to the public as part of the public review/assent process.

#### 9.0 Transition Plan (Optional)

A Transition Plan may be needed if the transfer of the Utility to the RDOS is controversial, complex or needs to consider existing Staff.

Depending on the size of the system and the circumstances surrounding the transfer of ownership to the RDOS, a transition plan may or may not be needed. Such a plan could include a user fee rates review if there was a concern with the equity and apportionment of water system costs. Utility management and operation is technical in nature and resources such as labour and equipment are shared between systems. Advisory committees are labour intensive to support and are not recommended.

#### 10.0 Public Review Process

Depending on the type of water system, the method and formality of public assent may vary. The RDOS will contact the province to confirm the method that will be acceptable. Once the public assent has been obtained, it may take several months until the provincial government approves any transfer of a Utility depending on the type of Utility system. If it is determined through the engineering or financial assessment that a borrowing bylaw is advantageous then this can be integrated into the public assent process.

The RDOS will work with the existing governing body or owner of a water system to host a public meeting or open house in which residents will have an opportunity to review the results of the engineering assessment, financial audit, financial plan and a transition plan (if desired). The intent of an open house is to ensure that residents understand any existing safety, debt, risk, environmental or operational issues with their Utility, and understand the costs required to fix their system to meet minimum standards. Benefits as well as any expected taxes or fee increase will be clearly identified.

#### **The following are examples of water system types and acceptable methods of public assent.**

Improvement District: A resolution by the Improvement District Board of Directors that affirms the dissolution of the Improvement District and the transfer of all assets to the RDOS is required. As part of the financial plan described above a borrowing bylaw may be required. If borrowing is required, authorization will be required by public vote.

Once resolved and agreed to by the RDOS, provincial approval is required.

A private water system: The owner of a private water system must sign the transfer agreement and the ratepayers must agree to the creation of a service establishment bylaw and possibly a borrowing bylaw through a formal public assent process.

A Water Users Community: a water users' community is a public corporate body created under the Water Users' Communities Act. All owners must agree to the transfer agreement, sign over all water rights and agree to the creation of a service establishment bylaw and possibly a borrowing bylaw through a formal public assent process.

Private utilities, regulated under the Water Utilities Act and Utilities Commission Act, require authorization from the Comptroller of Water Rights prior to finalizing the sale of assets to RDOS. Any sale to the RDOS must be subject to B.C. Water Comptroller approval. Improvement Districts are transferred by an Order-in-Council and do not require Comptroller approval or a transfer agreement.

#### **Formal public assent process:**

Once the contents of the engineering report and the overall financial picture have been discussed, residents will be asked if they wish to go to the next step, a formal public assent process. A public assent process basically asks, —Are you in favour of the RDOS taking over the system and charging you for the capital and maintenance costs? This can be accomplished by referendum, formal petition, or through an alternative approval process. A public assent process may include the transfer of any required water licenses. For example, a petition process may include a formal transfer of a water licence. Further, it will include an establishment bylaw and may include a borrowing bylaw.

Sample Resolution upon Completion of the Public Assent Process:

*THAT the (Name of the Utility) transfer its assets to the RDOS and dissolve the (Name of the Utility) and that the (Elected President Chair or Chief Executive Officer) be authorized to sign all agreements, proclamations and other documents required to effect such transfer and dissolution .*

If the public assent process is successful, the RDOS will prepare the necessary bylaws and paperwork to establish a service area, legally transfer ownership of the Utility, and will develop operational criteria.

#### **11.0 Final Board Approval**

In order to adopt service establishment and borrowing bylaws, public assent must be obtained. The Board will receive a report that summarizes the results of the above plans and the public assent process. Should there be sufficient public support through the public assent process for a borrowing bylaw, if needed, and a service establishment bylaw, the RDOS will proceed with the readings of the bylaw(s). Should there be significant risk to the RDOS, or be insufficient public support for the bylaws, then Staff will recommend that the utilities application be rejected. Significant risk shall include, but not be limited to, pending or existing lawsuits, unresolved Utility encroachments, an inability to meet existing regulation through a rejection of the borrowing bylaw or the inability of the RDOS to operate the Utility through the lack of existing licenses or the ability to transfer these licenses to the RDOS.

**UTILITY SYSTEM TRANSFER AGREEMENT**

THIS AGREEMENT dated for reference \_\_\_\_\_,

BETWEEN:

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

Address for Delivery: 101 Martin Street, Penticton, B.C., V2A 5J9

Contact Person:

Email Address:

(**“RDOS”**)

AND:

**[insert name and address of Utility owner/operator]**

Address for Delivery:

Contact Person:

Email Address:

(**“Operator”**)

**GIVEN THAT:**

The Operator owns and operates a domestic \_\_\_\_\_ system located within the boundaries of the RDOS, as shown generally on the map attached as Schedule A, (collectively, the **“Utility System”**).

The RDOS wishes to acquire certain Utility System assets and incorporate those assets as part of an RDOS \_\_\_\_\_ service and the Operator and the RDOS wish to enter into this Agreement to provide for the transfer of the Utility System to the RDOS.

THIS AGREEMENT IS EVIDENCE THAT in consideration of the promises exchanged below, and of the payment of \$1.00 by the RDOS to the Operator (the receipt and sufficiency of which the Operator acknowledges), the Operator and the RDOS covenant as follows:

**Sale & Transfer of Utility System**

1. On the terms and conditions of this Agreement, the Operator shall sell, assign, transfer and set over to the RDOS, and the RDOS shall purchase from the Operator, all of the Operator’s rights, title and interest in and to the following property and assets:

- (a) all buildings, improvements, works, machinery and equipment in any way related to or associated with the Utility System, including as described in Schedule B;
- (b) all land, easements, rights of way, licenses, permits, railway crossing agreements, encroachment agreements and other interests and agreements under which any part of the Utility System is permitted to be located or operated or as is otherwise necessary for the operation of the Utility System, including as listed in Schedule C;
- (c) all funds held in the reserve funds, if any, listed in Schedule D (the "Reserve Funds");
- (d) the additional property and assets listed in Schedule E; and
- (e) any property of any kind whatsoever, real or personal, wheresoever located, pertaining to or in any way related to or associated with the Utility System that is identified for acquisition by the RDOS pursuant to the terms of this Agreement;

but specifically excluding the assets and property listed in Schedule F (the "**Excluded Assets and Interests**").

In this Agreement, the term "**Assets**" refers to the assets and property to be transferred as identified under this section, excluding, for clarity, the Excluded Assets and Interests.

#### **Purchase Price**

- 2. On the Completion Date, the RDOS shall pay \$1.00 (the "**Purchase Price**") to the Operator as consideration for the sale, transfer and assignment of the Utility System under this Agreement.
- 3. If the Assets include any land owned in fee simple by the Operator, adjustments to the Purchase Price in respect of such land, both incoming and outgoing, usually the subject of adjustment between a vendor and a purchaser in connection with the purchase and sale of land, including adjustments of property taxes, utilities and rents, shall be made up to and including the Completion Date.

#### **Operator Obligations Before Completion**

- 4. From and after the execution of this Agreement until the Completion Date, the Operator covenants to:
  - (a) take all reasonable care to protect and safeguard the Assets and operate and otherwise deal with the Assets as a careful and prudent owner and operator would do and in such a manner that the Operator's representations and warranties under this Agreement remain true and correct;
  - (b) maintain in full force and effect insurance coverage in respect of the Assets against such risk and to such limits as are in accordance with prudent business practice and suitable to the Assets and the Utility System;
  - (c) not sell, transfer, dispose of, or mortgage, pledge, charge, subject to lien, grant a security interest in or otherwise encumber, the Utility System or the Assets in whole or in part;

- (d) use and expend monies held in any of the reserve funds in the normal operation of the Utility System and only for the purposes which the applicable reserve fund is established and in accordance with any trusts upon which such monies are held and to provide notice to the RDOS of any such expenditure as soon as possible;
  - (e) use all reasonable best efforts to obtain any third-party consent or approval necessary for the transfer and assignment to of the Assets to the RDOS;
  - (f) permit the RDOS, its employees, agents and contractors, to have access during normal business hours to the Utility System and the Assets and to all plans, drawings, specifications, operating manuals, books, accounts, data, records and other documents and material pertaining to the Utility System or the Assets and the operation, maintenance and repair thereof; and
  - (g) permit the RDOS, its employees, agents and contractors to make inspections, surveys, tests and studies of the Assets.
5. Within 21 days following the date of execution of this Agreement, and from time to time following notice from the RDOS, the Operator shall deliver to the RDOS copies, in electronic format where available, of all plans, drawings, specifications, operating manuals, books, accounts, data, records and other documents and material pertaining to the Utility System or the Assets.

#### **Timing of Transfer**

6. The date for completion of the transfer of the Assets to the RDOS (the “**Completion Date**”) shall be the day that is 28 days following the date that all of the conditions precedent under this Agreement are satisfied or waived or, if that day is not a business day, the next following business day.

#### **Free and Clear Transfer**

7. On the Completion Date, the Operator shall transfer, convey, assign and set over to the RDOS all of the Operator’s rights, title and interest in and to the Assets, free and clear of all liens, claims, charges and encumbrances and if the Assets include any lands owned in fee simple by the Operator, the Operator shall convey title to such lands to the RDOS free and clear of all liens, claims, charges and encumbrances other than those in favour of the RDOS or that have been approved in writing by the RDOS.

#### **Closing Documents**

8. On or before the Completion Date:
- (a) The Operator shall, as directed by the RDOS, deliver to the RDOS or the solicitors for the RDOS, the following documents, each executed by the Operator and, where applicable, in a form registrable in the land title office:
    - i. one or more Form A Transfers for lands owned by the Operator that are included in the Assets (the “**Transfers**”);

- ii. an assignment or assignments registrable in the land title office with respect to any Assets that are interests in land registered in the land title office (the “LTO Assignments”);
- iii. a general conveyance, assignment and transfer of all Assets;
- iv. a certified cheque payable to the RDOS in an amount equal to the amount of funds held in the Reserve Funds;
- v. a statutory declaration of a senior officer of the Operator certifying that the Operator is not a “non-resident” within the meaning of the Income Tax Act;
- vi. certified copies of resolutions of the shareholders and directors of the Operator authorizing the execution, delivery and implementation of this Agreement and of all documents to be delivered by the Operator under this Agreement;
- vii. a certificate of the president of the Operator certifying that all of the Operator’s representations and warranties in this Agreement are true as at the Completion Date and
- viii. such further deeds, acts, things, bills of sale, transfers, assignments, certificates and assurances as may be requisite in the reasonable opinion of the RDOS’ solicitor for more perfectly and absolutely assigning, transferring, conveying and assuring to and vesting in the RDOS, good and marketable title to the Assets, free and clear of all liens, claims, charges and encumbrances, immediately registerable in all places where registration of such instruments is required; and

- (b) The Operator shall deliver to the RDOS all manuals, records, accounts and other documents pertaining to the Utility System.

The RDOS shall cause its solicitors to prepare the above documents, which shall be in such form as may be determined by the RDOS and its solicitor.

### **Completion**

- 9. On the Completion Date, after receipt of all of the documents and things to be delivered by the Operator to the RDOS on the Completion Date pursuant to this Agreement, the RDOS shall cause all Transfers and LTO Assignments to be submitted for registration in the Land Title Office and upon receipt of a satisfactory post application land title office title search indicating such that in the normal course the RDOS shall be (i) the registered owner in fee simple of all of the lands identified in any Transfers, free and clear of all liens, charges and encumbrances except those in favour of or approved in writing by the RDOS, and (ii) registered owner of all of the interests identified in the LTO Assignments, the RDOS shall deliver a cheque to the Operator in an amount equal to the Purchase Price, as adjusted pursuant to the terms of this Agreement.

### **Possession and Risk**

- 10. On the Completion Date, the RDOS shall be entitled to possession of all of the Assets and, if any lands or buildings are included in the Assets, the Operator shall give vacant possession of such lands and buildings to the RDOS. The Assets are at the Operator’s risk until application is made to register the Transfers and LTO Assignments in the Land Title Office on the Completion Date and thereafter are at the risk of the RDOS.

## **Fees and Taxes**

11. The RDOS shall pay, as and when, due and payable:
- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) with respect to its acquisition of any of the Assets;
  - (b) any Land Title Office fees in connection with the registration, filing or deposit with the LTO of any document or plan to be deposited, filed or registered pursuant to this Agreement;
  - (c) any provincial sales tax payable in respect of the RDOS's acquisition of the Assets; and
  - (d) any GST payable in respect of RDOS's acquisition of the Assets.

Each party shall be responsible for its own legal fees and disbursements incurred in respect of this Agreement.

## **Operator Representations and Warranties**

12. The Operator represents and warrants to the RDOS that the following are true, and shall be true on the Completion Date, acknowledging that the RDOS is relying on the following representations and warranties in connection with its acquisition of the Assets, which representations and warranties shall survive the completion of the transaction under this Agreement:
- (a) the Operator is the legal and beneficial owner of, and has good and marketable title to, Assets free and clear of all liens, charges, security interests, encumbrances and claims of any kind;
  - (b) the Operator has operated the Utility System and the Assets in compliance with all applicable enactments and all orders, directives, rulings, decisions, requirements and approvals of any government authority having jurisdiction with respect to their operation, including under the Water Act, Water Users Communities Act, Utilities Commission Act, Water Sustainability Act, Environmental Management Act or otherwise; and
  - (c) If the Operator is a corporation, the Operator identity duly incorporated, validly existing and in good standing under the Business Corporations Act, has made all necessary filings required by that Act and has never been struck from the Registrar of Companies maintained by the office of the Registrar of Companies for British Columbia;
  - (d) the Operator has the legal capacity, power and authority to own the Utility System and the Assets and to enter into this Agreement and perform all of its obligations under this Agreement;
  - (e) all necessary actions, steps and other proceedings have been taken to approve and authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement and the transfer of the Assets to the RDOS;
  - (f) there is no action, suit, claim, litigation or proceeding pending or to the Operator's knowledge threatened against the Operator or in respect of the Utility System or the



Assets before any court, arbitrator, arbitration panel or administrative tribunal or agency that might affect the Operator's ability to perform any of its obligations under this Agreement and no state of facts exist that could constitute the basis of any such action, suit, claim, litigation or proceeding;

- (g) neither the Operator entering into this Agreement nor the performance by the Operator of the terms of this Agreement shall result in the breach of or constitute a default under any term or provision of any instrument, mortgage, deed of trust, lease, document or agreement to which the Operator is bound or subject;
- (h) the Operator has complied with all Environmental Laws in its operation of the Utility System and the Assets, during the period that the Operator has owned the Utility System, the Operator has not caused or permitted any Contaminants to be introduced, and is not aware of any Contaminants having been introduced into, onto or under, or migrating to or from, any land comprised in the Utility System or the Assets;
- (i) to the best of the Operator's knowledge, the land comprised in the Assets contains no active or inactive above ground or below ground storage tanks;
- (j) to the best of the Operator's knowledge, there is not now and has not been in the past any action, proceeding, investigation, prosecution or claim, pending or threatened under Environmental Laws in respect of, or related to the presence of Contaminants in, on or under any land comprised in the Assets, whether relating to the presence of Contaminants in the soils or ground water or migrating thereto or therefrom or otherwise;
- (k) to the best of the Operator's knowledge, there are no reports, soil test reports, assessments, audits, studies, permits, licenses or records with respect to the lands comprised in the Assets concerning or relating to Contaminants or compliance with Environmental Laws, whether or not prepared for the Operator or any other person, including any predecessors in title or tenants;
- (l) to the best of the Operator's knowledge, there are no Contaminants in, on or under the lands comprised in the Assets or migrating or having migrated to or from the lands comprised in the Assets;
- (m) there is no liability, contingent or otherwise, for any Governmental Charges in respect Utility System or the Assets;
- (n) the Operator is not a "non-resident" of Canada within the meaning of the Income Tax Act (Canada) and is not acting as agent, trustee or nominee for any person in connection with the transaction contemplated by this Agreement; and
- (o) there are no debts due or owing for any work, labour, service or materials provided to or performed on any land comprised in the Utility System or the Assets under which a lien or charge has arisen or could arise under the Builders Lien Act (British Columbia).

In this section,

**“Contaminants”** means

- (i) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous or special waste or waste;
- (ii) matter of any kind which is or may be harmful to safety or health or to the environment; or
- (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws;

**“Environmental Law”** means any past, present or future, common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health; and

**“Governmental Charges”** includes all taxes, customs, duties, rates, levies, assessments, re-assessments and other charges, together with all penalties, interests and fines with respect thereto, payable to any federal, provincial, local or other government or governmental agency, authority, board, bureau or commission, domestic or foreign.

#### **Operator Default**

- 13 If on the Completion Date any of the representations or warranties made by the Operator under this Agreement are untrue, or the Operator is in default under any of the covenants and obligations to be observed or performed by the Operator under this Agreement, the RDOS may elect not to complete the purchase of the Assets under this Agreement or to complete the purchase of the Assets under this Agreement, in either case without prejudice to any rights or remedies the RDOS may have in respect of the Operator’s breach or default.

#### **Conditions Precedent**

- 14 The obligation of the RDOS to complete the transaction provided for in this Agreement is subject to the satisfaction of the following conditions precedent being satisfied or waived on or before the applicable date specified, each of which is for the exclusive benefit of the RDOS and may be waived in whole or in part by the RDOS in writing at any time on or before the applicable date specified:
- (a) On or before the date that is 365 days following the date of execution of this Agreement by the parties, the RDOS will be satisfied in its sole discretion with the results of any due diligence investigations it undertakes with respect to the Utility System and the Assets.
  - (b) On or before the date that is 365 days following the date of execution of this Agreement by the parties, the RDOS will, in its sole and unfettered discretion, have enacted such bylaws as may be necessary in order to establish a new RDOS service or extend an existing RDOS service so as to provide services to the properties serviced by Assets

- (c) On the Completion Date, the representations and warranties of the Operator under this Agreement shall be true in all material respects, with the same effect as though the representations and warranties had been made on the Completion Date.
- (d) On or before the Completion Date, the RDOS shall have received all required consents of all government authorities and third parties necessary to permit any of the Assets to be transferred and assigned to the RDOS pursuant to this Agreement.

The Operator shall execute and deliver to the RDOS or to any governmental authority or other third party as directed by the RDOS such consents, authorizations and directions as may be necessary to enable the RDOS to conduct such due diligence investigations it chooses to undertake under paragraph (a) of this section and to enable the RDOS to receive the consents referred to in paragraph (d) of this section.

If any of the conditions precedent under this section is not satisfied or waived within the applicable time provided under this Agreement, this Agreement shall terminate and the parties shall have no further obligations to, nor rights against, each other in respect of this Agreement. In consideration of \$1.00 non-refundable paid by the RDOS to the Operator and other good and valuable consideration, the receipt and sufficiency of which the Operator acknowledges, the Operator agrees to remain bound by the terms and conditions of this Agreement while it remains subject to the conditions precedent under this section.

- 15. If the Utility System is a domestic water system or includes works for the supply of domestic water, the parties' obligations to complete the transfer of the Assets are subject to, and conditional upon, the satisfaction of the following condition precedent:

On or before the date that is 365 days following the date of execution of this Agreement by the parties and the Comptroller of Water Rights shall have approved, of the disposition of the Utility System under this Agreement on conditions, if any, acceptable to the RDOS exercising its sole discretion.

The conditions precedent created by this section may not be waived and if such condition is not satisfied on or before the date set out above, this Agreement shall terminate and the parties shall have no further obligations to, nor rights against, each other in respect of this Agreement.

***For clarity, if the Utility System is not a domestic water system and does not include works for the supply of domestic water, the condition precedent under this section shall not apply.***

#### **Additional Assets and Property**

- 16. If during the course of any due diligence investigations the RDOS undertakes with respect to the Utility System and the Assets, the RDOS determines it necessary or desirable to include in the acquisition under this Agreement additional assets or property, of any kind whatsoever, real or personal (including contracts and intellectual property of any kind), wheresoever located, associated with or related to the Utility System that are not currently included as part of the Assets, the RDOS may provide notice of that determination to the Operator identifying such additional property and assets and upon such notice such property and assets shall be included as "Assets" and the transfer and assignment to the RDOS under this Agreement.

### **Post Completion Operator Obligations**

17. If after the Completion Date any of the Assets remain in the name of the Operator, the Operator shall hold such Assets in trust for the RDOS until such time as those Assets are in the name of the RDOS and during that period the RDOS shall have a license to use such Assets to the same extent as if such Assets were held in the name of the RDOS.

### **No RDOS Assumption of Utility System Liabilities**

18. For clarity:
  - (a) Except as provided for under paragraph (c) of this section and for any debts or other liabilities expressly assumed by the RDOS pursuant to a separate written agreement between the RDOS and the Operator, the RDOS is acquiring the Assets only and does not assume in any way responsibility or liability for any liabilities, debts or other obligations of the Operator in any way relating to or associated with the Utility System or the Assets.
  - (b) Without limiting paragraph (a) of this section and for any debts or other liabilities expressly assumed by the RDOS pursuant to a separate written agreement between the RDOS and the Operator, the Operator will be solely responsible for any continuing obligations under any contracts or agreements not included in the Assets and transferred and assigned to the RDOS under this Agreement and for taking such steps as the Operator considers necessary or desirable to terminate such contracts and agreements.
  - (c) From and after closing on the Completion Date, the RDOS shall be responsible for performing all obligations arising after closing under the terms of any rights of way, easements, crossing agreements, contracts and agreements that are Assets transferred and assigned to the RDOS under this Agreement.

### **Operator Indemnity of RDOS**

19. The Operator hereby indemnifies and saves harmless the RDOS and its elected and appointed officials, officers, employees and agents from and against:
  - (a) any and all liabilities and debts, whether accrued, absolute, contingent or otherwise, existing at closing on the Completion Date;
  - (b) any and all losses, damage and deficiencies resulting from any misrepresentation, breach of warranty or non-fulfilment of any covenant on the part of the Operator under this Agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the RDOS under this Agreement; and
  - (c) any and all claims, actions, suits, demands, proceedings, assessments, judgments, costs and legal and other expenses incident or related to any of the foregoing.

## General Provisions

20. Further Assurances – The Operator shall promptly execute and deliver all such further documents, deeds and instruments, and do and perform such other acts, as the RDOS may consider necessary or desirable to give full effect to the intent and meaning of this Agreement.
21. Operator Performance – The Operator shall perform its obligations, including under any covenants, under this Agreement at its own expense and without compensation or reimbursement from the RDOS.
22. Notice – Any notice which may be or is required to be given under this Agreement will be in writing and be delivered or sent by email to the applicable address set out above, or to such other address notice of which is given in accordance with this section. Any notice that is delivered or sent by email is to be considered given on the day it is delivered or sent, except that if that day is not a Business day, the notice is to be considered given on the next Business day after it is sent.
23. No Effect on Powers – This Agreement does not, and nothing herein will:
  - (a) affect or limit the discretion, rights, duties or powers of the RDOS or the approving officer for the RDOS under the common law or any statute, bylaw or other enactment;
  - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Operator Lands; or
  - (c) relieve the Operator from complying with any common law or any statute, regulation, bylaw or other enactment.

Without limiting the foregoing, the Operator acknowledges and agrees that where fulfillment of a condition precedent under this Agreement requires that the RDOS adopt bylaws or pass resolutions, the adoption of such bylaws and passage of such resolutions is within the absolute and unfettered discretion of the Board and the provisions of this Agreement will not in anyway obligate the Board to adopt such bylaws or pass such resolutions or affect the Boards' discretion with respect thereto.

24. Time of Essence – Time is of essence of this Agreement.
25. Interpretation – In this Agreement:
  - (a) all dollar amounts referred to in this Agreement are Canadian dollars;
  - (b) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
  - (d) the term “enactment” has the meaning given to it under the Interpretation Act (British Columbia) on the reference date of this Agreement;

- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
  - (g) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this Agreement;
  - (h) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including"; and
  - (i) "Business Day" means a day other than a Saturday, Sunday or statutory holiday in British Columbia.
26. Tender – Any tender of documents or money to be made upon a party may be made at that party's address set out in this Agreement or upon their solicitor.
27. No Other Agreements – This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other representations, warranties, promises and agreements regarding its subject.
28. Assignment – The Operator may not assign all or any part of this Agreement, or the benefit hereof, without the prior written consent of the RDOS, which may be withheld arbitrarily and without reason.
29. Schedules – The following are Schedules to this Agreement and form an integral part of this Agreement:
- Schedule A** – Drawing or Map of Utility System
- Schedule B** – Buildings, Improvements, Works, Machinery and Equipment
- Schedule C** – Land, Easements, Rights of Way, Licenses, Permits, Railway Crossing Agreements, Encroachment Agreements and Other Interests and Agreements
- Schedule D** – Reserve Funds and Amounts (if any)
- Schedule E** – Additional Property and Assets to be Purchased (if any)
- Schedule F** – Excluded Assets and Interests (if any)
30. Modification – This Agreement may not be modified except by an instrument signed in writing by the parties, except that the Completion Date may be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

31. Governing Law – This Agreement will be governed by and construed in accordance with the laws of British Columbia.
32. Non-Merger – None of the provisions of this Agreement will merge in the transfer of the Assets or any other documents delivered on the Completion Date and the provisions of this Agreement will survive the completion of the purchase and sale transaction under this Agreement.

Counterparts and Electronic Execution & Delivery - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the RDOS and the Operator have executed this Agreement below.

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN**

by its authorized signatories:

\_\_\_\_\_  
Chair:

\_\_\_\_\_  
Corporate Officer:

**[insert name of Utility corporation]** by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**List of Schedules:**

**Schedule A** – Drawing or Map of Utility System

**Schedule B** – Buildings, Improvements, Works, Machinery and Equipment

**Schedule C** – Land, Easements, Rights of Way, Licenses, Permits, Railway Crossing Agreements, Encroachment Agreements and Other Interests and Agreements

**Schedule D** – Reserve Funds and Amounts (if any)

**Schedule E** – Additional Property and Assets to be Purchased (if any)

**Schedule F** – Excluded Assets and Interests (if any)

APPENDIX B – APPLICATION FORM

**RDOS UTILITY SYSTEM ACQUISITION**

**APPLICATION FORM**

Name of Organization:			
Contact Name (s):			
Contact Mailing Address:			
Email(s):			
Phone(s):			
<b>UTILITY INFORMATION</b>			
Location:			
Description:			
Number of Connections:			
Does your Utility have all surface and well water Licenses & Permits necessary for the RDOS to own, operate and maintain the Utility? Is anything missing?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Are you willing to transfer all assets (including reserves) to the RDOS at the end of this process for \$1 subject to public and provincial approval? (See policy)		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Have you applied to the RDOS within the last 5 years to have the Utility transferred?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Are you aware of any lawsuits liabilities pending or underway that the RDOS might inherit should the Utility be transferred to the RDOS?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Have you read the RDOS Utility Acquisition Policy?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Has your Board resolved to apply to the RDOS for transfer? (See Section 3 of the Utility Acquisition Policy) Include a copy of the Resolution.		YES <input type="checkbox"/>	NO <input type="checkbox"/>
<p><b>DECLARATION:</b></p> <p>I _____ declare that the statements made above are truthful to the                  (Print Name) best of my knowledge.</p> <p>_____ Date</p>			
Signature		Date	