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OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT dated for reference the 1st day of January 2010:

BETWEEN:

SAGE MESA WATER & PUBLIC SERVICE CO. LTD.

A company duly incorporated under the laws of the
Province of British Columbia

c/o Deputy Comptroller of Water Rights, Ex-officio Director
3rd Floor-395 Waterfront Crescent, Victoria, B.C. V8T 5K7
(hereinafter referred to as "Sage Mesa")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN of

101 Martin Street, Penticton, B.C., V2A 5J9

(hereinafter referred to as "the RDOS")

OF THE SECOND PART

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA AS REPRESENTED BY THE**

MINISTRY OF THE ENVIRONMENT with offices at the
Parliament Buildings, Victoria, British Columbia

(hereinafter referred to as "the Ministry")

OF THE THIRD PART

WHEREAS:

- A. Sage Mesa owns a domestic water system located within the geographical boundaries of the RDOS.
- B. The Ministry, pursuant to an order of the Deputy Comptroller of Water Rights under Section 97 of the Utilities Commission Act

dated the 27th day of June 1990 has seized the business and property of Sage Mesa and has taken overall management, operation and maintenance of the domestic water system owned by Sage Mesa.

- C. The RDOS has expertise in the operation, management, maintenance and repair of domestic water systems; and
- D. The Ministry wishes to engage the RDOS to operate, maintain and repair the domestic water system of Sage Mesa in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants, promises and agreements hereinafter set forth, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto) the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions

- (a) **"Applicable Law"** means all public laws, statutes, codes, acts, permits, licenses, ordinances, orders, by-laws, rules, regulations, and standards which now or at any time hereafter may be applicable to and enforceable against the relevant work or activity in question, or any part thereof, including without limitation, those relating to life, safety, environment and health;
- (b) **"Capital Expenditures"** means an expenditure for repairs or improvements and for purchases of additional or replacement machinery or equipment where the cost of such expenditure is greater than five thousand dollars (\$5,000.00) and the depreciable life of the applicable item is, according to GAAP, in excess of five (5) years;
- (c) **"Comptroller"** means the Comptroller of Water Rights, *Water Utility Act* and, under the *Water Act*, and includes the Deputy Comptroller or person appointed by the Minister of the Environment as Acting Comptroller;
- (d) **"Emergency Repair"** means the repair of a condition which, if not performed immediately, creates an imminent danger to Persons or

property and/or an unsafe condition at the Water System threatening Persons or property;

- (e) **"Emergency Response and Contingency Plan"** means as described in Section 10 of the Drinking Water Protection Act (SBC 2001) c.9;
- (f) **"Event of Force Majeure"** means any circumstances or acts beyond the reasonable control of the party claiming force majeure and which could not have been avoided or prevented by due diligence and the use of reasonable efforts by the party claiming force majeure, including, without limitation, labour disputes, strikes, lockouts, unavoidable casualties, riots, insurrection or terrorism, which have the effect of preventing or hindering performance, if such circumstances or events are beyond the reasonable control of the party claiming force majeure and could not have been avoided or prevented by due diligence and the use of reasonable efforts by the party claiming force majeure, provided that in no event will a lack or insufficiency of funds or failure to make payment of monies on the part of the party claiming force majeure, be or be allowed to give rise to an Event of Force Majeure and in no event will a circumstance or act arising out of the default by a party claiming force majeure of its obligations under this Agreement be or be allowed to give rise to an Event of Force Majeure;
- (g) **"GAAP"** means Canadian Generally Accepted Accounting Principles applied on a consistent basis and which are in accordance with recommendations from time to time of the Canadian Institute of Chartered Accountants, at the date on which such generally accepted accounting principles are applied;
- (h) **"Governmental Authority"** means any present or future government or legislature (whether Federal, Provincial, or regional district), court, regulatory authority, agency, tribunal, department, commission, board or other like authority;
- (i) **"Hazardous Substance"** means all contaminant, pollutant, flammable, explosive, hazardous waste, pathological waste, generic or process-specific waste, leachates, solvents, pesticides, and all radioactive, noxious, hazardous, toxic, corrosive, combustible, ignitable, and reactive material, substance and constituent (including, without limitation, polychlorinated biphenyls (PCBs), dioxins, asbestos, and urea formaldehyde foam insulation) and all other materials, substances and constituents (whether gas, liquid, or solid) deemed, defined to be, listed or referred to as hazardous or as a contaminant (either singly or in combination with any other materials, substances or constituents) in or pursuant to any Applicable Law;

- (j) **"IHA"** means Interior Health Authority;
- (k) **"Major Repairs"** means a repair or replacement, or a related series of repairs or replacements to the Water System, or any part thereof, having a cost of repair or replacement in any Operating Year in excess of Five Thousand Dollars (\$5,000.00) and the depreciable life of the applicable item is, according to GAAP in excess of five (5) years;
- (l) **"Ministry"** means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of the Environment;
- (m) **"Operating Year"** means the period of twelve (12) months starting on the 1st day of January and ending on the 31st day of December.;
- (n) **"Parties"** means the Ministry, Sage Mesa and the RDOS;
- (o) **"Person"** means an individual, corporation, partnership, limited partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department, and the heirs, beneficiaries, executors, legal representatives or administrators of an individual;
- (p) **"RDOS"** means the Regional District of Okanagan Similkameen;
- (q) **"Sage Mesa"** means Sage Mesa Water & Public Service Co. Ltd.;
- (r) **"Term"** has the meaning set forth in Section 3.2; and
- (s) **"Water System"** means the domestic water system owned by Sage Mesa.

1.2 Interpretation

For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) "this Agreement" means this agreement as it may from time to time be supplemented or amended by one or more agreements between the Parties;
- (b) all references in this Agreement to designated "Articles", "Sections" and other subdivisions are to be designated Articles, Sections and other subdivisions of this Agreement;
- (c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole or not to any particular Article, section or other subdivision;

- (d) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (e) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (f) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa;
- (g) all payments of funds shall be in and references to \$(dollar) amounts shall mean lawful Canadian currency; and
- (h) the language in all parts of this Agreement is for convenience and shall not affect the construction or interpretation of this Agreement.

ARTICLE 2

OWNERSHIP OF WATER SYSTEM

2.1 Ownership

The RDOS and Sage Mesa agree that the Water System will at all times be owned by Sage Mesa and that this Agreement does not grant or convey to the RDOS any legal or equitable title, claim, interest or estate in the Water System.

ARTICLE 3

THE RDOS TO OPERATE AND MAINTAIN THE WATER SYSTEM

3.1 Engagement of the RDOS

Sage Mesa engages the RDOS, during the Term, to operate, maintain and repair the Water System for and on behalf of Sage Mesa, in accordance with the terms of this Agreement. Notwithstanding the aforesaid, the right of control of overall authority of management, operation and control will be maintained by Sage Mesa.

3.2 Term

The Term of this Agreement shall be for a period commencing on the 1st day of January 2010 and expiring at midnight on the 31st day of December 2014, unless terminated earlier pursuant to the terms of this Agreement.

3.3 Renewal

This Agreement may be renewed for a further term of five (5) years upon mutual agreement between the parties, and either party wishing to renew this Agreement shall advise the other party accordingly in writing not less than six (6) months prior to the expiry date as provided herein.

3.4 Limitation of RDOS' Duties

The RDOS' obligations under this Agreement are contingent upon and subject to Sage Mesa making available, in a timely fashion, the funds budgeted for and/or reasonably required by the RDOS to carry out such obligations during the Term.

3.5 Termination

Notwithstanding anything herein to the contrary, either Party to this Agreement may terminate this Agreement on six (6) months prior written notice to the other and in such event, each Party shall be unconditionally released from any further obligations herein save and except any existing obligations as of the date of termination.

3.6 Emergency Response and Contingency Plan

Sage Mesa shall upon execution of this Agreement provide to the RDOS the Emergency Response and Contingency Plan.

ARTICLE 4

USE OF THE WATER SYSTEM

4.1 Operations

The RDOS covenants and agrees to exercise all reasonable efforts to cause the Water System to be actively and diligently utilized to Applicable Standards subject to the current state of repair of the Water System as of the date of this Agreement.

ARTICLE 5

OPERATION AND MAINTENANCE OF THE WATER SYSTEM

5.1 General Operations

Subject to the current limitations of the operational condition of the Water System, the RDOS intends to exercise all reasonable efforts to operate the Water System in order to insure a continuous supply of water to such subscribers of the Water System as is affordable and that meets current water quality guidelines.

5.2 Maintenance and Operation

The RDOS shall carry out regular maintenance, repair and replacement matters (i.e. maintenance, repair and replacement which does not constitute Major Repairs) of the following with respect to the Water System:

- (a) maintain and clean the chlorine residual meter;
- (b) annually locate and exercise mainline valves;
- (c) alarm testing;
- (d) provide system flushing annually;
- (e) weed clearing around pump house reservoir, fire hydrants and air relief valves;
- (f) record Water System program to check trending information daily;
- (g) install and record all new service connections as required on a cost plus basis;
- (h) supervise any authorized contracts on waterworks as required on a cost plus basis;
- (i) maintain and clean pump stations;
- (j) flushing and maintenance of fire hydrants;
- (k) maintenance, keep daily logs, record data, perform minor equipment repairs as needed, preventive pump maintenance including oil changes and lubrications of equipment in accordance with equipment manufacturers' specifications, check chlorine cylinders daily, order and receive supplies as needed, change chlorine cylinders as needed, all in accordance with Workers' Compensation Board regulations;
- (l) conduct water sampling and reporting in accordance with current Permit to Operate issued by Interior Health Authority;
- (m) furnish the tools, computer equipment, labor and transportation necessary to perform the services as referred to herein;

- (n) regular maintenance and minor maintenance of the Water System; and
- (o) such other duties, testing and reporting as may be reasonably required from time to time by Sage Mesa, including water meter reading as required for billing purposes.

5.3 Maintenance - Availability

The maintenance in section 5.2 is at all times subject to the availability of equipment and personnel.

ARTICLE 6 EMERGENCY SERVICE

6.1 Emergency Work

Emergency work to the Water System that arises during normal operating hours will be accommodated during the normal operating hours providing scheduled work can be re-scheduled and in the event scheduled work cannot be re-scheduled, the emergency work will be performed on overtime after normal operating hours or a suitable contractor will be engaged to perform the work.

6.2 On Call

The RDOS will provide to Sage Mesa and the public an on-call person that will respond to all Water System emergencies after regular business hours.

6.3 Emergency Telephone Number

The RDOS will provide to Sage Mesa and the public a twenty-four hour emergency telephone number, a cellular telephone number and be available at all times in the event of an emergency.

6.4 Contact Personnel

The RDOS will provide to Sage Mesa a list of contact and on-call personnel complete with emergency telephone numbers and updates as changes occur.

ARTICLE 7 WATER SYSTEM BREAK/LEAK

7.1 Break or Leak

In the event of a Water System break or leak, the RDOS will isolate the problem and make a decision as to whether to repair the break immediately, throttle down the Water System or repair the following day and, as time permits, advise all affected residents of the problem and estimated time of outage.

7.2 Water System Compromise

Any Water System compromise after normal working hours will be repaired that day, provided the work can be safely performed under natural light conditions, otherwise the work will be performed the following day commencing normal operating hours.

ARTICLE 8

WATER QUALITY ISSUES

8.1 Bacteriological Test

In the event of a positive bacteriological test:

- (a) the RDOS shall follow the procedures as set out in the Emergency Response and Contingency Plan;
- (b) the RDOS shall notify IHA, follow the procedure set out in the Emergency Response and Contingency Plan and provide any follow up notification as required by IHA;
- (c) the RDOS will notify Sage Mesa and collect any additional information, testing etc. that Sage Mesa requires that is not required pursuant to the Emergency Response and Contingency Plan;
- (d) all bacteriological tests will be performed at an accredited laboratory and may be supplemented by the RDOS using Idexx Colilert twenty-four hour system;
- (e) the RDOS staff will discuss instructions from Sage Mesa and IHA with respect to the location and results of any additional tests that may be required including flushing or additional chlorination; and
- (f) the RDOS will continue sampling water quality until water quality parameters are at approved levels and IHA has determined that the Water System is safe and water advisory orders rescinded.

ARTICLE 9

OPERATION AND MAINTENANCE FEE

9.1 Operation and Maintenance Fee

As compensation to the RDOS for providing operation and maintenance services to the Water System as provided herein, Sage Mesa shall pay the RDOS, during the Term, a fee based upon the actual costs of the RDOS in carrying out its obligations pursuant to this Agreement plus 15% calculated on the labour and labour load component of costs and 10% calculated on all other actual costs. For the purposes of this Agreement "actual costs" shall mean actual labour costs plus current labour load at time of billing (which, as of the date of this Agreement, is 21.67% for union staff and 21.89% for management/exempt staff) plus any cost of supplies and services that may be incurred pursuant to Article 5. The RDOS shall invoice Sage Mesa monthly for the operation and maintenance fee and the said invoice shall be payable by Sage Mesa within fifteen (15) days after receipt thereof.

9.2 Callouts and Emergencies

The RDOS shall invoice Sage Mesa monthly for the operation and management fee. The said invoice shall be payable by Sage Mesa within fifteen (15) days after the receipt thereof.

9.3 Additional Services

Should Sage Mesa request professional services advice from RDOS staff which the RDOS considers to be above and beyond normal administration of this contract, a fee will be charged therefor. The fees therefor shall be negotiated at the time of request by Sage Mesa.

ARTICLE 10**PERSONNEL AND EMPLOYEES****10.1 Selection and Employment of Personnel**

Unless otherwise mutually agreed in writing, all staff and other personnel of the RDOS shall not be employees, agents or independent contractors of Sage Mesa.

ARTICLE 11**OBSERVANCE OF APPLICABLE LAWS****11.1 Observance of Applicable Laws**

Subject to the condition of the Water System as of the date hereof, the RDOS covenants that it will comply with or cause to be complied

with all Applicable Laws, which relate to the Water System and to the equipment, maintenance, operation and use of the Water System and improvements in the making of, repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Water System, or any part thereof covenants to comply with or cause to be complied with all lawful, police, fire and sanitary regulations imposed by any federal, provincial or regional district authorities and to observe and obey all lawful governmental and regional district regulations and other requirements governing the conduct of the Water System.

ARTICLE 12

INDEMNIFICATION

12.1 Indemnification of the RDOS

The Ministry and Sage Mesa jointly and severally agree to defend, indemnify and hold harmless, the RDOS, their elected officials, officers, employees, agents, successors and assigns against any claims, demands, losses, cost (including reasonable legal fees), damages, actions, causes of action, suits or proceedings whatsoever (including without limitation, those made by third parties or arising out of claims by third parties) suffered or incurred by such parties, arising out of or in connection with;

- (a) any negligent act or omission, or intentional misconduct on the part of Sage Mesa or any of its employees or agents in the performance of its obligations under this Agreement;
- (b) a breach by Sage Mesa of any of its representations, covenants or agreements made herein including without limitation, Sage Mesa's obligation to pay the fees herein in a timely manner;
- (c) any environmental condition of the Water System or on or under the said Water System not caused by the RDOS or its employees or agents;
- (d) any structural defect with respect to any of the Water System; or
- (e) any act or omission carried out by the RDOS at or pursuant to the direction or instruction of the Ministry and/or Sage Mesa, its agents or employees unless the RDOS is negligent in carrying out any said act or omission of Sage Mesa.

12.2 Indemnity of Sage Mesa

The RDOS will indemnify and save harmless Sage Mesa and the Ministry, their respective elected officials, officers, employees and

agents (collectively the "Indemnitees") from and against any and all claims, demands, losses, costs (including reasonable legal fees), damages, actions, causes of action, suits or proceedings whatsoever (including, without limitation, those made by third parties or arising out of claims by third parties) suffered or incurred by any of the Indemnitees in any manner based upon, arising out of, related to, occasioned by or attributable to:

- (a) the negligent acts or omissions or willful misconduct of the RDOS or its elected officials, officers, employees, agents, contractors and business invitees, or anyone for whom the RDOS is responsible for at law; or
- (b) any breach, violation or non-performance by the RDOS of any covenant or obligation of the RDOS set out in this Agreement,

provided, however, the above indemnity shall be limited in accordance with Section 288 of the Local Government Act in that the RDOS shall not be responsible or liable in any action based upon nuisance or on the rule in the Rylands v. Fletcher case if the damages arise, directly or indirectly out of the breakdown or malfunction of the Water System.

12.3 Conditions to Indemnification

With respect to each separate matter brought by any third party against or which a party hereto ("Indemnatee") is indemnified by the other party ("Indemnitor") under this Article 12, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigation, defending and or otherwise attempting to resolve any proceeding, claim or cause of action underlying such matter, except that;

- (a) the Indemnatee may participate in such defense or resolution, however, the Indemnitor's insurer may settle any claim with respect to a claim for which coverage therefor is provided pursuant to paragraph 14.1(d) herein without approval of the Indemnatee;
- (b) the Indemnatee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution provided the Indemnitor shall continue to be obligated to indemnify the Indemnatee hereunder in connection therewith; and
- (c) neither Indemnitor nor Indemnatee shall agree to any settlement without the prior written consent (which shall not be unreasonably withheld or delayed). In any event, the Indemnitor and Indemnatee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the

Indemnitor's expense. With respect to each and every matter to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, the Indemnitee shall promptly (and in no event more than twenty (20) days after third party litigation has commenced asserting such claim), give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

12.4 Claims of Indemnity

Notwithstanding the right of indemnity referred to in paragraph 12.1 herein, the RDOS agrees, provided a claim for indemnity is not prejudiced, not to enforce the said indemnity for a matter that is the subject of the said indemnity until the earlier of:

- (i) such time as Sage Mesa and/or the Ministry have had a reasonably opportunity to advance a claim upon Sage Mesa's insurer(s); or
- (ii) seven (7) days after a judgment or order from a court or tribunal having jurisdiction which orders payment of moneys by the RDOS thereon.

12.5 Survival

The obligation of the Parties contained in this Article 12 shall survive the termination or expiry of this Agreement.

ARTICLE 13

RELEASE

13.1 Release

Sage Mesa releases and forever discharges the RDOS, its elected and appointed officials, employees and agents from any claim, cause of action, suit, demand, expense, costs and legal fees which Sage Mesa may have against the RDOS for any loss or damage or injury that Sage Mesa may sustain or suffer as a result of any mechanical or operational deficiencies of the Water System.

ARTICLE 14

INSURANCE

14.1 General Liability Insurance - RDOS

- (a) The RDOS will obtain, provide, maintain and pay for Commercial General Liability Insurance relating to the use, operation, maintenance and repair of the Water System during the Term.
- (b) The policy of insurance will have limits of not less than Thirty-Five Million Dollars (\$35,000,000.00) in respect of any one accident or occurrence, with no aggregate limit and a deductible amount of not more than Ten Thousand Dollars (\$10,000.00) per accident or occurrence.
- (c) Policy coverage shall include, but will not be limited to, personal injury, bodily injury and death resulting therefrom, property damage, products and completed operations.
- (d) The policy shall include Sage Mesa and the Ministry as an additional insured, and the policy shall also include a cross-liability clause and a waiver of subrogation clause in favour of Sage Mesa and the Ministry.
- (e) The policy shall be taken out with an insurance company licensed to carry on the business of insurance in British Columbia.
- (f) The policy shall be endorsed to provide that Sage Mesa and the Ministry is to receive not less than Thirty (30) days' notice in writing in advance of any cancellation, material amendment, or change restricting coverage.
- (g) The policy shall be endorsed to provide that if the insurance provided under the policy is cancelled or changed to the detriment of Sage Mesa and the Ministry, the insurer shall provide the required notice to Sage Mesa and the Ministry by registered mail.
- (h) No modification or changes from these specifications shall be made without Sage Mesa's and the Ministry's prior written approval.
- (i) A valid certificate of insurance evidencing the required liability insurance coverage outlined herein shall be forwarded to Sage Mesa and the Ministry on the commencement date of the Term or shortly thereafter.

14.2 General Liability Insurance – Sage Mesa

- (a) Sage Mesa will obtain, provide, maintain and pay for Commercial General Liability Insurance relating to the use, operation, maintenance and repair of the Water System during the Term.
- (b) The policy of insurance will have limits of not less than Five Million Dollars (\$5,000,000.00) in respect of any one accident or occurrence, ~~with no aggregate limit~~ and a deductible amount of

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not more than One Thousand Dollars (\$1,000.00) per accident or occurrence.

- (c) Policy coverage shall include, but will not be limited to, personal injury, bodily injury and death resulting therefrom, property damage, products and completed operations.
- (d) The policy shall include RDOS and the Ministry as an additional insured, and the policy shall also include a cross-liability clause and a waiver of subrogation clause in favour of RDOS and the Ministry.
- (e) The policy shall be taken out with an insurance company licensed to carry on the business of insurance in British Columbia.
- (f) The policy shall be endorsed to provide that RDOS and the Ministry is to receive not less than Thirty (30) days' notice in writing in advance of any cancellation, material amendment, or change restricting coverage.
- (g) The policy shall be endorsed to provide that if the insurance provided under the policy is cancelled or changed to the detriment of RDOS and the Ministry, the insurer shall provide the required notice to RDOS and the Ministry by registered mail.
- (h) No modification or changes from these specifications shall be made without RDOS's and the Ministry's prior written approval.
- (i) A valid certificate of insurance evidencing the required liability insurance coverage outlined herein shall be forwarded to RDOS and the Ministry on the commencement date of the Term or shortly thereafter.

ARTICLE 15

TERMINATION

15.1 Termination for Default

- (a) The following shall constitute Events of Default:
 - (i) in the case of Sage Mesa, the failure of Sage Mesa to pay any amount to the RDOS when the same is payable; or
 - (ii) the failure of either the RDOS or Sage Mesa to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement.
- (b) If there is an Event of Default, the non-defaulting party may give to the defaulting party notice of its intention to terminate this

Agreement after the expiration of a period of fifteen (15) days from the date of such notice. Upon the expiration of such period, this Agreement shall be at an end. Notwithstanding the foregoing, if with respect to Events of Default referred to herein, upon receipt of such notice the defaulting party promptly and with all due diligence cures the default within the said fifteen (15) day period, then that Event of Default ceases to exist and the Agreement shall not be so terminated. However, with respect to any default, if such default is not susceptible of being cured within a fifteen (15) day period, but is capable of being cured within a longer period of time, and provided that the defaulting party is taking and continuing on an uninterrupted basis action to cure such default with all due diligence until the same is cured, the cure period may be extended by such additional period not to exceed ninety (90) days from such notice. Once a cure has been effected, the notice shall be of no effect.

- (c) The remedies granted in this Section 14.1 shall not be in substitution for, but shall be in addition to any rights and remedies otherwise available for breach of contract.

15.2 Obligations on Termination

Upon termination of this Agreement, all fees and payments due and owing by Sage Mesa to the RDOS under this Agreement which are computed on a monthly or other periodic basis shall be annualized, prorated and paid within thirty (30) days after termination of this Agreement, including all deferred, accrued and unpaid fees.

ARTICLE 16

ASSIGNMENT

16.1 Prohibition on Assignment

The RDOS will not assign any of its rights and obligations under this Agreement without Sage Mesa's and the Ministry's prior written approval which approval may arbitrarily withheld.

ARTICLE 17

COVENANTS, REPRESENTATIONS AND WARRANTIES

17.1 Covenants

All of the terms and provisions of this Agreement shall be deemed and construed to be "covenants" to be performed by the respective Parties

as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

17.2 Representations and Warranties of the Parties

Each of the Parties represent to the other that it has the full legal right, power and authority to enter into this Agreement and that this Agreement has been duly executed and delivered by each of the Parties and constitutes a valid and binding obligation of the Parties, enforceable in accordance with its terms.

ARTICLE 18

NOT A PARTNERSHIP OR JOINT VENTURE

18.1 Not a Partnership or Joint Venture

Nothing contained in this Agreement, nor any acts of Sage Mesa, the Ministry or the RDOS are or were intended by Sage Mesa, the Ministry or the RDOS to constitute, nor shall they be deemed to constitute, Sage Mesa, the Ministry and the RDOS as partners, joint venturers, or principal and agent, beyond what is set out specifically in this Agreement.

ARTICLE 19

MISCELLANEOUS

19.1 Notice

Except in the case of emergency, when notice may be given by telephone with later confirmation in writing, any notice, request, approval, demand or other communication which may be or is hereby required or permitted to be given under this Agreement shall be in writing and either be delivered by hand or sent by facsimile transmission addressed as follows:

(a) if to Sage Mesa:

c/o Ministry of the Environment

Water Stewardship Division

Management & Standards Branch

3rd Floor – 395 Waterfront Crescent

Victoria, B.C. V8T 5K7

Attention: Head, Utility Engineering

Utility Regulation Section

(b) if to the Ministry:

c/o Ministry of the Environment
Water Stewardship Division
Management & Standards Branch
3rd Floor – 395 Waterfront Crescent
Victoria, B.C. V8T 5K7

Attention: Head, Utility Engineering
Utility Regulation Section

(c) if to the RDOS:

101 Martin Street
Penticton, B.C., V2A 5J9

Fax: (250) 492-0063

Attention: Manager of Public Works

or at such other address or facsimile number, which notice has been given as provided in this section. Any notice which is delivered by hand will be deemed to have been given on the first day on which it is delivered. Any notice which is sent by facsimile transmission will be deemed to have been given on the first day after it is transmitted, provided that the sender obtains written confirmation of successful transmission. If a Party changes its address or facsimile number or both, such Party will promptly give notice of its new address or facsimile number, or both, to such other Parties provided in this section, whereupon such notice to such Party will thereafter be sent to such new address or facsimile number. While the telephone numbers of the Parties in this Agreement are set out herein, notice or other formal communication between them must be in writing and delivered or transmitted as set out in this section.

19.2 Force Majeure

If a Party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of an Event of Force Majeure then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period or disability and the period of all such delays resulting from any such thing required or permitted by either

party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto shall be extended by the total period of all such delays unless as otherwise provided herein.

19.3 Approvals

Whenever any Party is requested to give its approval to any matter, such approval shall not be withheld or delayed unreasonably. If a Party shall desire the approval of the other Party hereto to any matter, such Party shall give notice to such other Party that it requests such approval, specifying in such notice the matter (in reasonable detail) as to which such approval is requested.

19.4 No Waiver of Breach

No failure by the RDOS or Sage Mesa to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

19.5 Governing Law

This Agreement and the rights and obligations and relations of the Parties shall be governed by and construed in accordance with the Applicable Laws of the Province of British Columbia and the federal laws of Canada applicable therein. The Parties agree that the Courts of British Columbia shall have jurisdiction to entertain any action or other legal proceedings based on any provisions of this Agreement. Each Party does hereby attorn to the jurisdiction of the Courts of the Province of British Columbia.

19.6 Severability of Provisions

If any provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.7 Entire Agreement

Unless otherwise provided herein, this Agreement, together with the Schedules, shall constitute the entire agreement between the Parties with respect to the operation, management, maintenance and repair of the Water System and shall replace all other agreements entered into prior to the commencement date of the Term.

19.8 Waiver – Remedies

No failure or delay by any party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or equity.

19.9 Time of the Essence

Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

19.10 Counterparts

This Agreement may be executed in any number of counterparts, and all such counterparts shall for all purposes constitute one agreement, binding on the Parties, provided each Party has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that both Parties are not signatory to the same counterpart. This Agreement may be executed and delivered by either of the Parties by transmitting to the other a copy of this Agreement (executed by such delivering Party) by telecopier or similar means of electronic communication, and delivery in that manner by a Party shall be binding upon such Party and deemed to be an original.

19.11 Rights and Remedies

The duties and obligations imposed by this Agreement and the rights and remedies available under this Agreement are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

19.12 Other Assurances

The Parties will do everything reasonably necessary to give effect to the intent of this Agreement, including the execution of further instruments.

19.13 Amendments

Neither this Agreement or any of its terms may be changed or modified, waived, terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver or termination is sought.

19.14 Enurement and Binding Effect

This Agreement shall enure to the benefit of the Parties and their respective successors and permitted assigns and shall be binding upon the successors and assigns.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the year and date first above written.

Sage Mesa Water & Public Service Co. Ltd.
By its authorized signatory(ies)

Sec. 22 Personal Information

Pieter Bekker
Ex-officio Director

REGIONAL DISTRICT OF
OKANAGAN-SIMILKAMEEN

by its Authorized Signatory(ies):

Sec. 22 Personal Information signature of D. Ashton

Sec. 22 Personal Information signature of B. Newell

Her Majesty the Queen in the Right
of the Ministry of the Environment
by his duly authorized designate

Sec. 22 Personal Information

Glen Davidson
Comptroller of Water Rights

File 52006(18)/rpt

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OPERATION AND MAINTENANCE AGREEMENT EXTENSION

THIS AGREEMENT dated for reference the 1st day of January 2015.

BETWEEN:

SAGE MESA WATER & PUBLIC SERVICE CO. LTD.

A company duly incorporated under the laws of the
Province of British Columbia

c/o Deputy Comptroller of Water Rights, Ex-officio Director
3rd Floor-395 Waterfront Crescent, Victoria, B.C. V8T 5K7
(hereinafter referred to as "Sage Mesa")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN of
101 Martin Street, Penticton, B.C., V2A 5J9
(hereinafter referred to as "the RDOS")

OF THE SECOND PART

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA AS REPRESENTED BY THE
MINISTRY OF THE ENVIRONMENT with offices at the
Parliament Buildings, Victoria, British Columbia
(hereinafter referred to as "the Ministry")

OF THE THIRD PART

WHEREAS:

- A. Sage Mesa owns a domestic water system located within the geographical boundaries of the RDOS.
- B. The Ministry, pursuant to an order of the Deputy Comptroller of Water Rights under Section 97 of the Utilities Commission Act

dated the 27th day of June 1990 has seized the business and property of Sage Mesa and has taken overall management, operation and maintenance of the domestic water system owned by Sage Mesa.

- C. The RDOS has expertise in the operation, management, maintenance and repair of domestic water systems; and
- D. The Ministry wishes to engage the RDOS to operate, maintain and repair the domestic water system of Sage Mesa in accordance with the terms of this Agreement.

NOW THEREFORE THIS **EXTENSION AGREEMENT** WITNESSETH that for and in consideration of the mutual covenants, promises and agreements hereinafter set forth, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto) the Parties, intending to be legally bound hereby, agree as follows:

That by mutual agreement, **Article 3, 3.3, Renewal** will be put into effect resulting in the amendment of **Article 3, 3.2 Term**, as follows:

3.2 Term

The Term of this Extension Agreement shall be for a period commencing on the 1st day of January 2015 and expiring at midnight on the 31st day of December 2019, unless terminated earlier pursuant to the terms of this Extension Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the year and date first above written.

Sage Mesa Water & Public Service Co. Ltd.
By its authorized signatory(ies)

Sec. 22 Personal Information

REGIONAL DISTRICT OF
OKANAGAN-SIMILKAMEEN

by its Authorized Signatory(ies):

Sec. 22 Personal Information signature of M. Pendergraft

Sec. 22 Personal Information signature of B. Newell

Her Majesty the Queen in the Right
of the Ministry of the Environment
by his duly authorized designate

Sec. 22 Personal Information

File 52006(18)/rpt

OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT dated for reference the 1st day of January 2020

BETWEEN:

SAGE MESA WATER & PUBLIC SERVICE CO. LTD.

A company duly incorporated under the laws of the Province of British Columbia
c/o Deputy Comptroller of Water Rights, Ex-officio Director
3rd Floor – 2975 Jutland Road, Victoria, B.C. V8T 5J9
(hereinafter referred to as "Sage Mesa")

AND:

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

101 Martin Street, Penticton, B.C., V2A 5J9
(hereinafter referred to as the "RDOS")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS
REPRESENTED BY THE MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND
RURAL DEVELOPMENT** with offices at the Parliament Buildings, Victoria, British Columbia
(hereinafter referred to as "the Ministry")

WHEREAS:

- A. Sage Mesa owns a domestic water system located within the geographical boundaries of the RDOS.
- B. The Ministry, pursuant to an order of the Deputy Comptroller of Water Rights under Section 97 of the Utilities Commission Act RSBC 1996 c. 473 dated the 27th day of June 1990 seized the business and property of Sage Mesa and has taken overall management, operation and maintenance of the Water System owned by Sage Mesa.
- C. The Water System services approximately 270 water connections.
- D. RDOS has experience in the operation, management, maintenance and repair of domestic water systems; and
- E. The Ministry engaged the RDOS on January 1, 2010 to operate, maintain and repair the Water System and wishes to renew that agreement in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants, promises and agreements hereinafter set forth, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto) the Parties, intending to be legally bound hereby, agree as follows:

1.0 ARTICLE 1 INTERPRETATION

1.1 Definitions

- (a) **"Agreement"** means this agreement and includes the recitals and schedules.
- (b) **"Applicable Law"** means all public laws, statutes, codes, acts, permits, licenses, ordinances, orders, by-laws, rules, regulations, and standards which now or at any time hereafter may be applicable to and enforceable against the relevant work or activity in question, or any part thereof, including without limitation, those relating to life, safety, environment and health;
- (c) **"Capital Expenditures"** means an expenditure for repairs or improvements and for purchases of additional or replacement machinery or equipment where the cost of such expenditure is greater than five thousand dollars (\$5,000.00) and the depreciable life of the applicable item is, according to GAAP, in excess of five (5) years;
- (d) **"Claim"** means any actual, potential or threatened claim, demand, suit, action, cause of action, accusation, cost recovery action, proceeding, investigation, charge, ticket, summons, citation, direction, inquiry, order and any other assertion of or with respect to liability or responsibility of any kind arising, asserted or threatened, formally or informally, pursuant to or based upon any enactment, any agreement or contract or at common law or in equity (whether arising in respect of tort, contract or otherwise);
- (e) **"Comptroller"** means the Comptroller of Water Rights, Water Utility Act and, under the Water Act, and includes the Deputy Comptroller or person appointed by the Minister of Forests, Lands, Natural Resource Operations and Rural Development as Acting Comptroller;
- (f) **"Emergency Repair"** means the repair of a condition which, if not performed immediately, creates an imminent danger to Persons or property and/or an unsafe condition at the Water System threatening Persons or property;
- (g) **"Emergency Response and Contingency Plan"** means as described in Section 10 of the Drinking Water Protection Act (SBC 2001) c.9;
- (h) **"Environmental Liability"** means any Claim or Expense resulting from the violation or alleged violation of any federal, provincial or municipal laws, statutes, ordinances, codes, regulations, rules, orders, or decrees regulating, relating to or imposing liability or standards of conduct concerning any environmental matters including, but not limited to the Canadian Environmental Protection Act, the Fisheries Act, and the British Columbia Environmental Management Act and any similar, replacement or supplemental acts and all regulations, orders or decrees, now or hereafter made pursuant to any of the foregoing.
- (i) **"Event of Force Majeure"** means any circumstances or acts beyond the reasonable control of the party claiming force majeure and which could not have been avoided or prevented by due diligence and the use of reasonable efforts by the party claiming force majeure, including, without limitation, labour disputes, strikes, lockouts, unavoidable casualties, riots, insurrection or terrorism, which have the effect of preventing or hindering performance, if such circumstances or events are beyond the reasonable control of the party claiming force majeure and could not have been avoided or prevented by due diligence and the use of reasonable efforts by the party claiming force majeure, provided that in no event will a lack or insufficiency of funds or failure to make payment of monies on the part of the party claiming force majeure, be or be allowed to give rise to an Event of Force Majeure and in no event will a circumstance or act arising out of the

default by a party claiming force majeure of its obligations under this Agreement be or be allowed to give rise to an Event of Force Majeure;

- (j) **"Expenses"** means all liabilities, obligations, duties, losses, damages, costs, expenses (including legal fees and expenses on a solicitor and own client basis, and fees and disbursements of experts, consultants and contractors, and costs and expenses with respect to or related to security bonds, investigation, survey, sampling, testing, remediation, reclamation, monitoring and reporting and other services), penalties, fines and monetary sanctions, cost of remedial action, and all amounts paid to settle a Claim, or to satisfy any judgment, order, decree, directive, award or other obligation to pay any amount of whatever nature or kind;
- (k) **"GAAP"** means Canadian Generally Accepted Accounting Principles applied on a consistent basis and which are in accordance with recommendations from time to time of the Canadian Institute of Chartered Accountants, at the date on which such generally accepted accounting principles are applied;
- (l) **"Governmental Authority"** means any present or future government or legislature (whether Federal, Provincial, or regional district), court, regulatory authority, agency, tribunal, department, commission, board or other like authority;
- (m) **"IHA"** means Interior Health Authority;
- (n) **"Indemnified Parties"** means the RDOS and included members of its Board of Directors and its officers, employee, agents, successors and assigns and all others for whom RDOS is, at law, responsible;
- (o) **"Major Repairs"** means a repair or replacement, or a related series of repairs or replacements to the Water System, or any part thereof, having a cost of repair or replacement in any Operating Year in excess of Five Thousand Dollars (\$5,000.00) and the depreciable life of the applicable item is, according to GAAP in excess of five (5) years;
- (p) **"Ministry"** means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development;
- (q) **"Operating Year"** means the period of twelve (12) months starting on the 1st day of January and ending on the 31st day of December.;
- (r) **"Parties"** means the Ministry, Sage Mesa and the RDOS;
- (s) **"Person"** means an individual, corporation, partnership, limited partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department, and the heirs, beneficiaries, executors, legal representatives or administrators of an individual;
- (t) **"RDOS"** means the Regional District of Okanagan-Similkameen;
- (u) **"Report"** has the meaning set forth in Section 3.6;
- (v) **"Sage Mesa"** means Sage Mesa Water & Public Service Co. Ltd.;
- (w) **"Term"** has the meaning set forth in Section 3.2; and
- (x) **"Water System"** means the domestic water system owned by Sage Mesa.

1.2 Interpretation

For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) all references in this Agreement to designated "Articles", "Sections" and other subdivisions are to be designated Articles, Sections and other subdivisions of this Agreement;
- (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole or not to any particular Article, section or other subdivision;
- (c) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa;
- (f) all payments of funds shall be in and references to \$(dollar) amounts shall mean lawful Canadian currency; and
- (g) the language in all parts of this Agreement is for convenience and shall not affect the construction or interpretation of this Agreement.

2.0 ARTICLE 2 OWNERSHIP OF WATER SYSTEM

2.1 Ownership

The Parties agree that the Water System will at all times be owned by Sage Mesa and that this Agreement does not grant or convey to the RDOS any legal or equitable title, claim, interest or estate in the Water System.

3.0 ARTICLE 3 RDOS TO OPERATE AND MAINTAIN THE WATER SYSTEM

3.1 Engagement of the RDOS

The Ministry engages the RDOS, during the Term, to operate, maintain and repair the Water System for and on behalf of Sage Mesa and the Ministry, in accordance with the terms of this Agreement. Notwithstanding the aforesaid, the right of control of overall authority of management, operation and control will be maintained by Sage Mesa or the Ministry.

3.1.1 Term

The Term of this Agreement shall be for a period commencing on the 1st day of January 2020 and expiring at midnight on the 31st day of December 2024, unless terminated earlier pursuant to the terms of this Agreement.

3.2 Renewal

This Agreement may be renewed for a further term of five (5) years upon mutual agreement between the parties, and either party wishing to renew this Agreement shall advise the other

party accordingly in writing not less than six (6) months prior to the expiry date as provided herein.

3.3 Limitation of RDOS' Duties

The RDOS' obligations under this Agreement are contingent upon and subject to Sage Mesa making available, in a timely fashion, the funds budgeted for and/or reasonably required by the RDOS to carry out such obligations during the Term.

3.4 Termination

Notwithstanding anything herein to the contrary, a Party to this Agreement may terminate this Agreement on six (6) months prior written notice to the other and in such event, each Party shall be unconditionally released from any further obligations herein save and except any existing obligations as of the date of termination.

3.5 Emergency Response and Contingency Plan

Sage Mesa or the Ministry shall, upon execution of this Agreement, provide to the RDOS the Emergency Response and Contingency Plan.

4.0 ARTICLE 4 USE OF THE WATER SYSTEM

4.1 Operations

Subject to the current state of repair of the Water System as of the date of this Agreement and anytime during the Term, the RDOS covenants and agrees to exercise all reasonable efforts to cause the Water System to be actively and diligently utilized to Applicable Standards.

5.0 ARTICLE 5 OPERATION AND MAINTENANCE OF THE WATER SYSTEM

5.1 General Operations

Subject to the current limitations of the operational condition of the Water System, the RDOS intends to exercise all reasonable efforts to operate the Water System in order to insure a continuous supply of water to such subscribers of the Water System as is affordable and that meets current water quality guidelines.

5.2 Maintenance and Operation

The RDOS shall carry out regular maintenance, repair and replacement matters (i.e. maintenance, repair and replacement which does not constitute Major Repairs) of the following with respect to the Water System:

- (a) maintain and clean the chlorine residual meter;
- (b) annually locate and exercise mainline valves;

- (c) alarm testing;
- (d) provide system flushing where possible;
- (e) weed clearing around pump house reservoir, fire hydrants and air relief valves;
- (f) record Water System program to check trending information daily;
- (g) install and record all new service connections as required on a cost plus basis;
- (h) supervise any authorized contracts on waterworks as required on a cost plus basis;
- (i) maintain and clean pump stations;
- (j) flushing and maintenance of fire hydrants;
- (k) maintenance, keep daily logs, record data, perform minor equipment repairs as needed, preventive pump maintenance including oil changes and lubrications of equipment in accordance with equipment manufacturers' specifications, order and receive supplies as needed, all in accordance with Workers' Compensation Board regulations;
- (l) conduct water sampling and reporting in accordance with current Permit to Operate issued by Interior Health Authority;
- (m) furnish the tools, computer equipment, labor and transportation necessary to perform the services as referred to herein;
- (n) regular maintenance and minor maintenance of the Water System; and
- (o) such other duties, testing and reporting as may be reasonably required from time to time by Sage Mesa or the Ministry, including water meter reading as required for billing purposes.

5.3 Maintenance - Availability

The maintenance in section 5.2 is, at all times, subject to the availability of equipment and personnel.

6.0 ARTICLE 6 EMERGENCY SERVICE

6.1 Emergency Work

Emergency work to the Water System that arises during normal operating hours will be accommodated during the normal operating hours providing scheduled work can be re-scheduled and, in the event, scheduled work cannot be re-scheduled, the emergency work will be performed on overtime after normal operating hours or a suitable contractor will be engaged to perform the work.

6.2 On Call

The RDOS will provide to Sage Mesa, the Ministry and the public an on-call person that will respond to all Water System emergencies after regular business hours.

6.3 Emergency Telephone Number

The RDOS will provide to Sage Mesa and the public a twenty-four hour emergency telephone number, and be available at all times in the event of an emergency.

6.4 Contact Personnel

The RDOS will provide to Sage Mesa and the Ministry a list of contact and on-call personnel complete with emergency telephone numbers and updates as changes occur.

7.0 ARTICLE 7 WATER SYSTEM BREAK/LEAK

7.1 Break or Leak

In the event of a Water System break or leak, the RDOS will make reasonable efforts to isolate the problem and make a decision as to whether to repair the break immediately, throttle down the Water System or repair the following day and, as time permits, advise all affected residents of the problem and estimated time of outage.

7.2 Water System Compromise

Any Water System compromise after normal working hours will be repaired by the RDOS, acting reasonably, that day, provided the work can be safely performed under natural light conditions, otherwise the work will be performed the following day commencing normal operating hours.

8.0 ARTICLE 8 WATER QUALITY ISSUES

8.1 Bacteriological Test

In the event that the IHA cancels the boil water advisory, as set out in Section 8.2 and a positive bacteriological test is recorded:

- (a) the RDOS shall follow the procedures as set out in the Emergency Response and Contingency Plan;
- (b) the RDOS shall notify IHA, follow the procedure set out in the Emergency Response and Contingency Plan and provide any follow up notification as required by IHA;
- (c) the RDOS will notify the Ministry and collect any additional information, testing etc. that the Ministry requires that is not required pursuant to the Emergency Response and Contingency Plan;
- (d) all bacteriological tests will be performed at an accredited laboratory and may be supplemented by the RDOS using Lex Colilert twenty-four hour system;

- (e) the RDOS staff will discuss instructions from the Ministry and IHA with respect to the location and results of any additional tests that may be required including flushing or additional chlorination; and
- (f) the RDOS will continue sampling water quality until water quality parameters are at approved levels and IHA has determined that the Water System is safe and water advisory orders rescinded.

9.0 ARTICLE 9 OPERATION AND MAINTENANCE FEE

9.1 Operation and Maintenance Fee

As compensation to the RDOS for providing operation and maintenance services to the Water System as provided herein, Sage Mesa or the Ministry shall pay the RDOS, during the Term, a fee based upon the actual costs of the RDOS in carrying out its obligations pursuant to this Agreement plus 15 % calculated on the labour and labour load component of costs and 10% calculated on all other actual costs. For the purposes of this Agreement "actual costs" shall mean actual labour costs plus current labour load at time of billing (which, as of the date of this Agreement, is 25% for union staff and 25% for management/exempt staff) plus any cost of supplies and services that may be incurred pursuant to Article 5. The RDOS shall invoice Sage Mesa monthly for the operation and maintenance fee and the said invoice shall be payable by Sage Mesa within fifteen (15) days after receipt thereof.

9.2 Callouts and Emergencies

The RDOS shall invoice Sage Mesa monthly for the operation and management fee. The said invoice shall be payable by Sage Mesa or the Ministry within fifteen (15) days after the receipt thereof.

9.3 Additional Services

Should Sage Mesa or the Ministry request additional services from RDOS staff which the RDOS considers to be above and beyond normal administration of this contract, a fee will be charged therefor. The fees therefor shall be negotiated at the time of request by Sage Mesa or the Ministry.

10.0 ARTICLE 10 PERSONNEL AND EMPLOYEES

10.1 Selection and Employment of Personnel

Unless otherwise mutually agreed in writing, all staff and other personnel of the RDOS shall not be employees, agents or independent contractors of Sage Mesa.

11.0 ARTICLE 11 OBSERVANCE OF APPLICABLE LAWS

11.1 Observance of Applicable Laws

Subject to the condition of the Water System as of the date hereof or during the Term, the RDOS covenants that it will comply with or cause to be complied with all Applicable Laws, which relate to the Water System and to the equipment, maintenance, operation and use of the Water System and improvements in the making of, repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Water System, or any part thereof covenants to comply with or cause to be complied with all lawful, police, fire and sanitary regulations imposed by any federal, provincial or regional district authorities and to observe and obey all lawful governmental and regional district regulations and other requirements governing the conduct of the Water System.

12.0 ARTICLE 12 INDEMNIFICATION

12.1 Indemnification of the RDOS

The Ministry and Sage Mesa jointly and severally covenants and agrees to defend, indemnify and save harmless the Indemnified Parties from and against all Claims which may arise or accrue to any person against the Indemnified Parties which the Indemnified Parties may pay, incur, sustain or be put to arising out of or in any way connected with, or that would not or could not be made or incurred but for, this Agreement or the Water System.

12.2 Indemnity of Sage Mesa

Without limiting the generality of Section 12.1, the Ministry agrees to defend, indemnify and save harmless the Indemnified parties from and against:

All manner of Claims relating to:

- i. bodily injury or death;
- ii. property damage;
- iii. or other loss or damage;

resulting from:

- i. the conduct of any work by the RDOS or any assignee, subtenant, agent, employee, contractor, subcontractor, invitee or licensee of the RDOS;
- ii. any act or omission by the RDOS or any assignee, subtenant, agent, employee, contractor, subcontractor, invitee or licensee of the RDOS;
- iii. the Deficiencies or any other defect, whether known or unknown, with respect to the Water System or a portion thereof;
- iv. a Geological Event; or;

- v. Environmental Liability;
- vi. Claim incurred by the Indemnified Parties in connection with or in any connected to a Claim referred in Section 12.1(a);
- vii. any breach, violation or non-performance by the RDOS of any covenant or obligation of the RDOS set out in this Agreement.

12.3 Limitation of Liability of the RDOS

The Ministry and Sage Mesa acknowledge and agree that the RDOS is not liable for losses or damages of any nature (including, without limitation, any Expense) sustained by the Ministry or Sage Mesa arising out of or in any way connected with, or that would not or could not be made or incurred but for, the Water System or this Agreement.

12.4 Release

The Ministry and Sage Mesa hereby remise, release and forever discharge, the RDOS against all Claims arising out of or in any way connected with, or that would not or could not be made or incurred but for, the Water System or this Agreement.

12.5 Indemnification Services: Termination of Agreement

The obligations of the Ministry to defend, indemnify and save harmless the RDOS and the Indemnified Parties under the provisions of this Agreement will apply and continue notwithstanding the termination of this Agreement or breach of this Agreement by any Party.

12.6 Claims of Indemnity

Notwithstanding the right of indemnity referred to herein, the RDOS agrees, provided a claim for indemnity is not prejudiced, not to enforce the said indemnity for a matter that is the subject of the said indemnity until the earlier of:

- (a) such time as Sage Mesa and/or the Ministry have had a reasonable opportunity to advance a claim upon Sage Mesa's insurer(s); or
- (b) seven (7) days after a judgment or order from a court or tribunal having jurisdiction which orders payment of moneys by the RDOS thereon.

12.7 Survival

The obligation of the Parties contained in this Article 12 shall survive the termination or expiry of this Agreement.

13.0 ARTICLE 14 INSURANCE

13.1 General Liability Insurance - RDOS

- (a) The RDOS will obtain, provide, maintain and pay for Commercial General Liability Insurance relating to the use, operation, maintenance and repair of the Water System during the Term.

- (b) The policy of insurance will have limits of not less than Thirty-Five Million Dollars (\$35,000,000.00) in respect of any one accident or occurrence, with no aggregate limit and a deductible amount of not more than Ten Thousand Dollars (\$10,000.00) per accident or occurrence.
- (c) Policy coverage shall include, but will not be limited to, personal injury, bodily injury and death resulting therefrom, property damage, products and completed operations.
- (d) The policy shall include Sage Mesa and the Ministry as an additional insured, and the policy shall also include a cross-liability clause and a waiver of subrogation clause in favour of Sage Mesa and the Ministry.
- (e) The policy shall be taken out with an insurance company licensed to carry on the business of insurance in British Columbia.
- (f) The policy shall be endorsed to provide that Sage Mesa and the Ministry is to receive not less than Thirty (30) days' notice in writing in advance of any cancellation, material amendment, or change restricting coverage.
- (g) The policy shall be endorsed to provide that if the insurance provided under the policy is cancelled or changed to the detriment of Sage Mesa and the Ministry, the insurer shall provide the required notice to Sage Mesa and the Ministry by registered mail.
- (h) No modification or changes from these specifications shall be made without Sage Mesa's and the Ministry's prior written approval.
- (i) A valid certificate of insurance evidencing the required liability insurance coverage outlined herein shall be forwarded to Sage Mesa and the Ministry on the commencement date of the Term or shortly thereafter.

13.2 General Liability Insurance - Sage Mesa

- (a) Sage Mesa will obtain, provide, maintain and pay for Commercial General Liability Insurance relating to the use, operation, maintenance and repair of the Water System during the Term.
- (b) The policy of insurance will have limits of not less than Five Million Dollars (\$5,000,000.00) in respect of any one accident or occurrence, with no aggregate limit and a deductible amount of
- (c) not more than One Thousand Dollars (\$1,000.00) per accident or occurrence.
- (d) Policy coverage shall include, but will not be limited to, personal injury, bodily injury and death resulting therefrom, property damage, products and completed operations.
- (e) The policy shall include RDOS and the Ministry as an additional insured, and the policy shall also include a cross-liability clause and a waiver of subrogation clause in favour of RDOS and the Ministry.
- (f) The policy shall be taken out with an insurance company licensed to carry on the business of insurance in British Columbia.

- (g) The policy shall be endorsed to provide that RDOS and the Ministry is to receive not less than Thirty (30) days' notice in writing in advance of any cancellation, material amendment, or change restricting coverage.
- (h) The policy shall be endorsed to provide that if the insurance provided under the policy is cancelled or changed to the detriment of RDOS and the Ministry, the insurer shall provide the required notice to RDOS and the Ministry by registered mail.
- (i) No modification or changes from these specifications shall be made without RDOS's and the Ministry's prior written approval.
- (i) A valid certificate of insurance evidencing the required liability insurance coverage outlined herein shall be forwarded to RDOS and the Ministry on the commencement date of the Term or shortly thereafter.

14.0 ARTICLE 14 TERMINATION

14.1 Termination for Default

- (a) The following shall constitute Events of Default:
 - (i) in the case of Sage Mesa or the Ministry , the failure of Sage Mesa or the Ministry to pay any amount to the RDOS when the same is payable; or
 - (ii) the failure of any Party to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement.
- (b) If there is an Event of Default, the non-defaulting party may give to the defaulting party notice of its intention to terminate this Agreement after the expiration of a period of fifteen (15) days from the date of such notice. Upon the expiration of such period, this Agreement shall be at an end. Notwithstanding the foregoing, if with respect to Events of Default referred to herein, upon receipt of such notice the defaulting party promptly and with all due diligence cures the default within the said fifteen (15) day period, then that Event of Default ceases to exist and the Agreement shall not be so terminated. However, with respect to any default, if such default is not susceptible of being cured within a fifteen (15) day period, but is capable of being cured within a longer period of time, and provided that the defaulting party is taking and continuing on an uninterrupted basis action to cure such default with all due diligence until the same is cured, the cure period may be extended by such additional period not to exceed ninety (90) days from such notice. Once a cure has been effected, the notice shall be of no effect.
- (c) The remedies granted in this Section 14.1 shall not be in substitution for, but shall be in addition to any rights and remedies otherwise available for breach of contract.

14.2 Obligations on Termination

Upon termination of this Agreement, all fees and payments due and owing by Sage Mesa or the Ministry to the RDOS under this Agreement which are computed on a monthly or other periodic basis shall be annualized, prorated and paid within thirty (30) days after termination of this Agreement, including all deferred, accrued and unpaid fees.

15.0 ARTICLE 15 ASSIGNMENT

15.1 Prohibition on Assignment

The RDOS will not assign any of its rights and obligations under this Agreement without the Ministry's prior written approval which approval may arbitrarily withheld.

16.0 ARTICLE 16 REPRESENTATIONS AND WARRANTIES

16.1 Covenants

All of the terms and provisions of this Agreement shall be deemed and construed to be "covenants" to be performed by the respective Parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

16.2 Representations and Warranties of the Parties

Each of the Parties represent to the other that it has the full legal right, power and authority to enter into this Agreement- and that this Agreement has been duly executed and delivered by each of the Parties and constitutes a valid and binding obligation of the Parties, enforceable in accordance with its terms.

17.0 ARTICLE 17 NOT A PARTNERSHIP OR JOINT VENTURE

17.1 Not a Partnership or Joint Venture

Nothing contained in this Agreement, nor any acts of Sage Mesa, the Ministry or the RDOS are or were intended by Sage Mesa, the Ministry or the RDOS to constitute, nor shall they be deemed to constitute, Sage Mesa, the Ministry and the RDOS as partners, joint ventures, or principal and agent, beyond what is set out specifically in this Agreement.

18.0 ARTICLE 18 MISCELLANEOUS

18.1 Notice

Except in the case of emergency, when notice may be given by telephone with later confirmation in writing, any notice, request, approval, demand or other communication which may be or is hereby required or permitted to be given under this Agreement shall be in writing and either be delivered by hand or sent by facsimile transmission addressed as follows:

(a) if to Sage Mesa:

c/o Ministry of the Forests, Lands, Natural Resource Operations and Rural Development
3rd Floor – 2975 Jutland Road Victoria, B.C. V8T 5J9
Attention: Head, Utility Engineering
Utility Regulation Section

(b) if to the Ministry:

c/o Ministry of the Forests, Lands, Natural Resource Operations and Rural Development
3rd Floor - 2975 Jutland Road Victoria, B.C. V8T 5J9
Attention: Head, Utility Engineering Utility Regulation Section

(c) if to the RDOS:

101 Martin Street
Penticton, B.C., V2A 5J9 Fax: (250) 492-0063
Attention: Manager of Public Works

or at such other address or facsimile number, which notice has been given as provided in this section. Any notice which is delivered by hand will be deemed to have been given on the first day on which it is delivered. Any notice which is sent by facsimile transmission will be deemed to have been given on the first day after it is transmitted, provided that the sender obtains written confirmation of successful transmission. If a Party changes its address or facsimile number or both, such Party will promptly give notice of its new address or facsimile number, or both, to such other Parties provided in this section, whereupon such notice to such Party will thereafter be sent to such new address or facsimile number. While the telephone numbers of the Parties in this Agreement are set out herein, notice or other formal communication between them must be in writing and delivered or transmitted as set out in this section.

18.2 Force Majeure

If a Party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of an Event of Force Majeure then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period or disability and the period of all such delays resulting from any such thing required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto shall be extended by the total period of all such delays unless as otherwise provided herein.

18.3 Approvals

Whenever any Party is requested to give its approval to any matter, such approval shall not be withheld or delayed unreasonably. If a Party shall desire the approval of the other Party hereto to any matter, such Party shall give notice to such other Party that it requests such approval,

specifying in such notice the matter (in reasonable detail) as to which such approval is requested.

18.4 No Waiver of Breach

No failure by the RDOS or Sage Mesa to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

18.5 Governing Law

This Agreement and the rights and obligations and relations of the Parties shall be governed by and construed in accordance with the Applicable Laws of the Province of British Columbia and the federal laws of Canada applicable therein. The Parties agree that the Courts of British Columbia shall have jurisdiction to entertain any action or other legal proceedings based on any provisions of this Agreement. Each Party does hereby attorns to the jurisdiction of the Courts of the Province of British Columbia.

18.6 Severability of Provisions

If any provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18.7 Entire Agreement

Unless otherwise provided herein, this Agreement, together with the Schedules, shall constitute the entire agreement between the Parties with respect to the operation, management, maintenance and repair of the Water System and shall replace all other agreements entered into prior to the commencement date of the Term.

18.8 Waiver - Remedies

No failure or delay by any party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or equity.

18.9 Time of the Essence

Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

18.10 Counterparts

This Agreement may be executed in any number of counterparts, and all such counterparts shall for all purposes constitute one agreement, binding on the Parties, provided each Party has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that both Parties are not signatory to the same counterpart. This Agreement may be executed and delivered by either of the Parties by transmitting to the other a copy of this Agreement (executed by such delivering Party) by tele copier or similar means of electronic communication, and delivery in that manner by a Party shall be binding upon such Party and deemed to be an original.

18.11 Rights and Remedies

The duties and obligations imposed by this Agreement and the rights and remedies available under this Agreement are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

18.12 Other Assurances

The Parties will do everything reasonably necessary to give effect to the intent of this Agreement, including the execution of further instruments.

18.13 Amendments

Neither this Agreement or any of its terms may be changed or modified, waived, terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver or termination is sought.

18.14 Enurement and Binding Effect

This Agreement shall enure to the benefit of the Parties and their respective successors and permitted assigns and shall be binding upon the successors and assigns.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the year and date first above written.

SAGE MESA WATER AND PUBLIC SERVICE CO. LTD

By its authorized signatory(ies)

Sec. 22 Personal Information

Jesal Shah, P.Eng.
Ex-officio Director on behalf of Sage Mesa
Water & Public Service Co. Ltd.

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

By its authorized signatories

Sec. 22 Personal Information signature of K. Kozakevich

Sec. 22 Personal Information signature of B. Newell

**HER MAJESTY THE QUEEN IN RIGHT OF THE MINISTRY OF THE PROVINCE OF BRITISH COLUMBIA AS
REPRESENTED BY THE MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL
DEVELOPMENT**

Sec. 22 Personal Information

Director and Comptroller of Water Rights
