

## KELOWNA WATER SUPPLY ESSENTIAL SERVICES AGREEMENT

THIS AGREEMENT is dated for reference the \_\_\_\_\_ day of April, 2020.

### **BETWEEN:**

The **City of Kelowna** ("Kelowna"), a municipality incorporated pursuant to the *Community Charter* and having its business office at 1435 Water Street Kelowna BC, V1Y 1J4

OF THE FIRST PART

### **AND:**

The **Glenmore Ellison Improvement District** ("GEID") an Improvement District incorporated pursuant to the *Local Government Act* and having its business office at 445 Glenmore Road, Kelowna, British Columbia, V1V 1Z6

OF THE SECOND PART

### **AND:**

The **Rutland Waterworks District** ("RWW"), an Improvement District incorporated pursuant to the *Local Government Act* and having its business office at 106-200 Dougall Road North, Kelowna, British Columbia, V1X 3K5

OF THE THIRD PART

### **AND:**

The **Black Mountain Irrigation District** ("BMID"), an Improvement District incorporated pursuant to the *Local Government Act* and having its business office at 285 Gray Road, Kelowna, British Columbia, V1X 1W8

OF THE FOURTH PART

### **WHEREAS:**

- A. ASSISTANCE is the sharing of supplies, equipment, personnel, information, or other resources across political boundaries; and,
- B. By Ministerial Order M084, the Minister of Public Safety and Solicitor General has declared that local authorities must exercise "best efforts" to enter into Assistance agreements with neighbouring jurisdictions to ensure continuity of essential services during the COVID-19 pandemic, and in particular to ensure that drinking water services are maintained; and
- C. ESSENTIAL SERVICES for the purpose of this agreement includes the supply of water.
- D. The Parties desire to enter into an Agreement whereby supplies, equipment, personnel,

information, or other resources of any Party can be deployed to assist the other Parties during an emergency;

- E. Kelowna, GEID, RWW and BMID consider it to be of mutual benefit to enter into an arrangement whereby any one of them may, in situations where the capacity of their own resources are insufficient, request Assistance from the others to bring the situation under control.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT**, in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the Parties agree as follows:

**Interpretation**

1. Unless the context otherwise requires, in this Agreement:
  - (a) "Assistance" means assistance by providing, upon request during an emergency, resources to another Party outside the jurisdictional boundaries of the Party that provides the resources;
  - (b) "CAO" means the person appointed by the Board of Directors, Board of Trustees, or Council for each Party as the Chief Administrative Officer or City Manager;
  - (c) "Emergency Situation" means a real or anticipated occurrence that, in the opinion of the CAO, compromises the ability of the Requesting Party to provide an Essential Service to their constituents.
  - (d) "Requesting Party" means the water provider requesting Assistance under this Agreement;
  - (e) "Responding Party" means the water provider responding to a request for Assistance under this Agreement.

**The Request for Assistance**

2. Where the CAO of the Requesting Party determines that the resources of their agency are insufficient to provide an Essential Service, whether actual or imminent, they may request the Assistance of another Party for the purposes of maintaining that service and in submitting such request, the said CAO shall specify the type of assistance and the number of personnel required.
3. All requests for Assistance under this Agreement shall be made by the CAO of the Requesting Party to the CAO of the Party from whom Assistance is being requested.

**The Provision of Assistance**

4. The CAO of a Party from whom Assistance has been requested under this Agreement

shall immediately upon receiving the request determine, in their sole discretion, as soon as reasonably possible whether and to what extent the supplies, equipment, personnel, information, or other resources of their local authority may be deployed to assist the Requesting Party and shall thereafter deploy to the extent available such supplies, equipment, personnel, information, or other resources.

5. Nothing in this Agreement requires the CAO of a Responding Party from whom Assistance has been requested under this Agreement to deploy supplies, equipment, personnel, information, or other resources to assist a Requesting Party that the CAO has determined are unavailable or are required to provide service within their own local authority.
6. All supplies, equipment, personnel, information, or other resources provided by a Responding Party to a Requesting Party under this Agreement shall, for the duration of the time that the Assistance is being provided under this Agreement, be under the direction of the CAO of the Requesting Party who shall adhere to recognized principles of accountability for responder personnel safety.
7. The Requesting Party is responsible for ensuring that any workers from the Responding Party understand the Safe Work Procedures required to undertake the tasks needed to assist and that all safety equipment and proper protective equipment is provided by the Requesting Party.
8. The CAO of a Responding Party may, in their sole discretion, recall at any time for whatever reason any resource provided by their local authority to the Requesting Party under this Agreement and shall not be liable for any loss, costs, damages or expenses whatsoever as a result thereof.
9. Upon being notified, whether verbally or in writing, that the CAO of a Responding Party has recalled supplies, equipment, personnel, information, or other resources under section 8 of this Agreement, the CAO of the Requesting Party shall immediately release and return to the Responding Party all supplies, equipment, personnel, information, or other resources provided by the Responding Party that was recalled by the CAO of the Responding Party.
10. The CAO of a Requesting Party shall, as soon as practicable, release and return to the Responding Party all supplies, equipment, personnel, information, or other resources provided by the Responding Party that is no longer required to assist in Requesting local government.
11. The CAO of a Requesting Party shall release and return to the Responding Party all equipment or other resources provided by the Responding Party in the same working condition as when it was accepted by the Requesting Party.

**The Cost of Assistance**

12. The Requesting Party shall reimburse the Responding Party for all labour and equipment costs plus any consumable items used during the Emergency Situation and any equipment that is damaged beyond repair or destroyed as a result of the event. Labour costs shall include all payroll costs and will be in conformance with the Responding Parties labour agreements.
13. The Requesting Party shall pay the Responding Party all costs described in clause 12 above, within 30 days from receipt of invoice from the Responding Party.
14. The Requesting Party shall be responsible for seeking recovery of costs for payments made to the Responding Party in clause 13 above, through Emergency Management BC (EMBC) or other senior level government program under which these costs may be recoverable.

**Waiver and Indemnification**

15. No Party to this Agreement shall bring any claim, action, or demand against any other Party to this Agreement or its elected officials, officers, employees, agents, volunteers, or contractors and, without limiting the generality of the foregoing, in respect of or in any way related to the decision of a CAO as to the level of Assistance, if any, or the withdrawal of Assistance to be provided under this Agreement.
16. No Party to this Agreement, nor its elected officials, officers, employees, agents, volunteers or contractors, shall be liable to any other Party to this Agreement in respect of the decision of a CAO as to the level of Assistance, if any, or the withdrawal of Assistance to be provided under this Agreement.
17. The Requesting Party shall indemnify and save harmless the Responding Party, its elected officials, officers, employees, agents, volunteers, or contractors from and against any and all claims, demands, actions, causes of action, loss, costs, damages and expense (including legal fees on a solicitor-client basis) in respect of or in any way related to the provision of Assistance under this Agreement and, without limiting the generality of the foregoing, any action taken or thing done or any failure to take action or do a thing under this Agreement, save and except where the claim, demand, action, cause of action, loss, cost, damage, or expense arose from the negligence of the Assisting Party.
18. In the event that a Responding Party acts independently of the Requesting Party then the Responding Party shall not be entitled to any indemnity pursuant to this article, but shall be responsible for its own legal liabilities and shall accordingly indemnify and save harmless the Requesting Party for any and all liabilities, actions, damages and claims of whatever nature or kind arising out of the independent act of the Responding Party

in connection with the Assistance.

**Insurance**

19. Each Party to this Agreement shall keep in force third party liability insurance coverage to a minimum of ten million (\$10,000,000.00), dollars and each such policy shall add all other Parties to this Agreement as additional named insured when rendering Assistance pursuant to this Agreement.
20. Each Party shall maintain insurance coverage on its own equipment.
21. Each Party shall maintain Worksafe BC coverage and other required coverage for the personnel of its own local government.
22. This Agreement shall be in force for a period of Two Years (24 months) commencing on the date of its execution by all Parties.

**Termination**

23. Any Party to this Agreement may terminate its rights and obligations under this Agreement by giving ninety (90) days written notice of its intention to do so to the other Parties to this Agreement and thereafter shall be unconditionally released from any further obligation herein save and except any obligation up to the date of termination.
24. Where a Party to this Agreement terminates its rights and obligations under this Agreement, this Agreement shall continue in force between the remaining parties.

**Miscellaneous Provisions**

25. Any requests for Assistance shall be subject to any of the Parties obligations pursuant to the provisions of the *Emergency Program Act* R.S.B.C. c. 111.
26. The Parties agree to consult on a regular basis through their CAO to achieve the optimum deployment of Assistance.
27. The Parties hereto agree that in the event of dispute between any of the Parties, each of the Parties hereto shall meet with a qualified mediator in a timely manner and attempt in good faith to negotiate a settlement of such dispute during which time such representatives shall disclose to the other all relevant information relating to the dispute.
28. This Agreement shall be the entire agreement between the Parties in respect of the provision of Assistance by the Parties to one another for the purposes of bringing Emergency Situations under control.
29. The Parties may not assign this Agreement without the prior written consent of the other

Parties to this Agreement.

30. This Agreement shall ensure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.
31. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of British Columbia.
32. Unless otherwise authorized under this Agreement, all notices under this Agreement shall be given in writing to the CAO of the Parties to this Agreement.
33. This Agreement may be executed in any number of counterparts. Any executed counterpart shall be construed as an original. All executed counterparts together shall constitute the Agreement.

IN WITNESS WHEREOF the parties have signed, sealed, and delivered this Agreement as of the date first written above.

The Corporate Seal of the  
**CITY OF KELOWNA**  
was hereunto affixed in the presence of:

\_\_\_\_\_  
Mayor

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

The Corporate Seal of the  
**GLENMORE ELLISON IMPROVEMENT DISTRICT**  
was hereunto affixed in the presence of:

\_\_\_\_\_  
Chair of Board of Trustees

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

The Corporate Seal of  
**RUTLAND WATERWORKS DISTRICT**  
was hereunto affixed in the presence of:

\_\_\_\_\_  
Chair of Board of Trustees

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

The Corporate Seal of the  
**BLACK MOUNTAIN IRRIGATION DISTRICT**  
was hereunto affixed in the presence of:

\_\_\_\_\_  
Chair of Board of Trustees

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

END OF AGREEMENT