

**KINBASKET WATER AND SEWER COMPANY LTD.  
REGIONAL DISTRICT OF EAST KOOTENAY  
MASTER SEWAGE SERVICING AGREEMENT**

This AGREEMENT is dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2021.

BETWEEN:

REGIONAL DISTRICT OF EAST KOOTENAY, in the Province of  
British Columbia and having its office at 19 – 24<sup>th</sup> Avenue South,  
Cranbrook, British Columbia

(hereinafter referred to as the “RDEK”)

OF THE FIRST PART

AND:

KINBASKET WATER & SEWER COMPANY LTD., a company  
registered under Inc. No. 495624 in the Province of British Columbia and  
having its registered and records office at Suite 3A, 492 Arrow Road,  
Invermere, British Columbia

(hereinafter referred to as the “KWSC”)

OF THE SECOND PART

WHEREAS:

- A. KWSC owns and operates a sewage disposal system within the Shuswap Reserve #0, near Invermere, British Columbia.
- B. In order to implement the operation and maintenance of a piped community sewage disposal system the RDEK has, by Bylaw No. 1503, established the Lands described in Schedule 1 as the Holland Creek Sewage Collection System Local Service Area.
- C. The RDEK is desirous of obtaining a sewage disposal service for the SA (and any extensions thereof) and has requested that KWSC agree to permit a connection point at which the RDEK may discharge sewage to the KWSC System from the SA and through the RDEK’s System.
- D. The RDEK recognizes a financial responsibility to pay for the sewage disposal services provided by KWSC pursuant to this Agreement.
- E. On the terms and conditions set out in this Agreement, KWSC has agreed to accept from the RDEK a specified amount of sewage discharged into the KWSC System resulting from generation within the SA.
- F. The RDEK acknowledges that the terms and conditions under which it will collect and discharge sewage into the KWSC System should be substantially the same as the standards and guidelines for the design, construction, operations, and maintenance of the KWSC System.

- G. The RDEK, pursuant to a Resolution dated \_\_\_\_\_ has approved and consented to the terms and conditions of this Agreement. A copy of the RDEK Resolution will be submitted to KWSC.
- H. The parties acknowledge that, from time to time, the RDEK may desire to extend the boundaries of the SA to include additional properties, and the parties agree to accommodate such extensions into this Agreement on the terms set out in Section 2 of this Agreement.

**NOW THEREFORE** in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree each with the other as follows:

## **1.0 INTERPRETATION**

### **1.1 In this Agreement, including the Recitals:**

- a) “Annual” means twelve (12) months of one calendar year and, in the case of the first year of this agreement, means the year 2021;
- b) “Average Flow” means the normal volume of sewage generated by domestic use, expressed in cubic meters, in any given year from April 1<sup>st</sup> to September 30<sup>th</sup>, divided by the total number of days within that same period;
- c) “BOD” means biochemical oxygen demand, being the quantity of oxygen utilized in the biochemical oxidation of organic substances under standard laboratory procedures in 5 days at 20 degrees Celsius expressed in milligrams per litre, as determined by the appropriate procedures in Standard Methods;
- d) “Connection Point” means the location as shown on the key plan provided in Schedule 2, where the RDEK System connects to the KWSC System;
- e) “Commencement Date” means January 1, 2021;
- f) “ISC” means Indigenous Services Canada and any successor Federal Government Agency or Ministry.
- g) “KWSC” means the Kinbasket Water & Sewer Company Ltd.;
- h) “KWSC System” means all components of the sewage disposal system including the sanitary sewer collection network, sewage pumping stations, sewage forcemains and sewage treatment and disposal facilities, located within the Reserve, including the Connection Point;
- i) “Lands” means those lands located within the SA, which are more particularly described in Schedule 1 as extended from time to time pursuant to Section 2 of this Agreement;
- j) “Meter” means the sewage meter required and installed at the Connection Point;

- k) “Person” includes a corporation, firm, association, band and any other legal entity;
  - l) “Qualified Professional” means a person who is registered or licensed as a professional engineer under the *Professional Governance Act*, 2021, as amended and replaced from time to time;
  - m) “RDEK” means the Regional District of East Kootenay or any successor to the Regional District of East Kootenay, and includes its officials, servants, employees, members, agents and contractors, sub-contractors, workers, licensees, successors and assigns;
  - n) “RDEK System” means all components of the RDEK’s sewage collection system which services the SA, which is connected to the KWSC System at the Connection Point;
  - o) “SA” means the Holland Creek Sewage Collection System Service Area as established by RDEK Bylaw No. 1503, as extended from time to time pursuant to Section 2 of this Agreement;
  - p) “SA Residence” means every dwelling unit within the SA, whether part of a single, two-family or multiple family building for which any required subdivision plan has been registered; and,
  - q) “TSS” means Total Suspended Solids or non-filterable residue in wastewater.
- 1.2 Unless the context otherwise requires, any reference to “this Agreement” means this instrument and all the Schedules attached to it, and any reference to any article, clause, section, subsection or paragraph in this Agreement.
  - 1.3 Headings or captions in this Agreement are inserted for convenience only and do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.
  - 1.4 The word “including”, when following any statement, will be construed broadly, to refer to all other things that could reasonably fall within the scope of such statement, whether or not non-limiting language (such as “without limitation” or “without limiting the generality of the foregoing”) is referenced.
  - 1.5 Words importing the masculine gender include the feminine and neuter genders and words in the singular will include the plural and the plural the singular, as the context permits or requires.
  - 1.6 Any reference to a statute includes and is a reference to such statute and to the regulations made hereunder, with all amendments made thereto as may be in force from time to time, and to any statutes or any regulations that may be passed which have the effect of supplementing or superseding such statutes or regulations.
  - 1.7 The terms “must”, “shall” and “will” are to be construed as mandatory.
  - 1.8 Unless otherwise expressly set out in this Agreement, all accounting and financial terms have the meanings assigned to them in accordance with generally accepted accounting principles (“GAAP”)

applicable in Canada at the time and all calculations to be made in connection with this Agreement will be made in accordance with GAAP, consistently applied.

- 1.9 In this Agreement all references to currency are deemed to mean lawful money of Canada and all amounts to be calculated or paid in connection with this Agreement are to be calculated in lawful money of Canada and paid by cheque or draft drawn upon a Canadian chartered bank.
- 1.10 This Agreement constitutes the entire agreement between the Parties and no understandings, representations, or agreements, oral or otherwise, exist between the Parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.

## **2.0 FUTURE EXTENSIONS**

- 2.1 In the event that the RDEK wishes to extend the boundaries of the SA to include additional properties, then the RDEK shall make a written request to KWSC for the extension setting out the boundaries of the proposed extension and the maximum number of sewage disposal services required for the extension.
- 2.2 If the proposed extension is approved by KWSC, then the parties shall enter into a Modification and Extension Agreement in the form set out in Schedule 3 to this Agreement.

## **3.0 CONNECTION POINT**

- 3.1 KWSC hereby permits and authorizes the RDEK System to be connected to the KWSC System at the Connection Point under the terms and conditions contained in this Agreement.
- 3.2 Subject to the terms and conditions of this Agreement, KWSC will accept from the RDEK, at the Connection Point, sewage generated solely within the SA, of the following amounts of domestic sewage:
  - a) Average Flow: 170 cubic meters per day;
  - b) Total Annual Volume: 62,050 cubic meters per year.
  - c) In reference to sections 3.2 a) and b), should the RDEK sewage volumes as confirmed at the Meter be less than the volume shown in Sections 3.2 a), then KWSC shall be obligated to have the capacity to accept 120% of the Average Flow as confirmed at the Meter for the period April 1<sup>st</sup> to September 30<sup>th</sup> from the previous year plus allowance for any new connection applications received by the RDEK from the time of the last Meter reading, or 100% of those volumes as in Sections 3.2 a) and b), whichever is less.
  - d) The allowance for each new connection application shall be based on the Average Flow of the immediately preceding year divided by the total number of existing units within the SA.
- 3.3 The domestic sewage accepted at the Connection Point and generated within the SA must meet the standards and requirements adopted and amended by KWSC from time to time, and any applicable federal, provincial and local government laws, regulations, Codes and standards, and must be

normal strength sewage received from residential use and occupancy and having a BOD not exceeding 200 milligrams per litre and TSS not exceeding 200 milligrams per litre.

- 3.4 The Parties acknowledge and agree that there may be reasonable concerns which may arise from time to time regarding the flows/volumes of sewage and sewage characteristics received at the Connection Point. The Parties agree to use a collaborative approach to addressing any reasonable bone fide concerns raised in this regard.
- 3.5 The Parties acknowledge and agree that there may be reasonable concerns which may arise from time to time as to whether the sewage disposal capacity is adequate or sufficient to meet the sewage service requirements of the SA. The Parties agree to use a collaborative approach to addressing any reasonable bone fide concerns raised in this regard.

Nevertheless, the Parties acknowledge that the sewage disposal regime outlined in Section 3.2 anticipates providing sewage disposal to:

- a) 285 single family SA Residences\*
- b) 151 two-family or multiple family SA Residences

Furthermore, the sewage disposal regime outlined in Section 3.2 takes into account infiltration and inflow conditions.

\*Includes pool and beach house

- 3.6 In the absence of a Meter at the Connection Point, the Parties agree that an alternative means of satisfactorily determining the sewage flows by calculation or otherwise will be acceptable by mutual agreement. This could include sewage flows being a percentage of water demands, or as calculated by pump run times at the sewage pumping station, etc.

#### **4.0 FEES AND CHARGES FOR SEWAGE DISPOSAL**

- 4.1 KWSC will install, maintain and service the Meter.
- 4.2 The volume of sewage discharged by the RDEK to the KWSC System shall be deemed to be the volume recorded on the Meter. KWSC will cause the Meter to be read and the results recorded daily.
- 4.3 In the manner provided for in Sections 4.4 and 4.5, KWSC will charge and the RDEK will pay to KWSC for the sewage disposed by the RDEK pursuant to this Agreement, the following fees:
- a) Year One (1) of this Agreement (Notwithstanding the Commencement Date of this agreement, with respect to Fees and Charges Year One of this Agreement shall commence January 1, 2022):
    - i. \$555.80 per single family SA Residence per year, being \$138.95 per single family SA Residence per quarter;

- ii. \$415.10 per SA Residence in a two-family or multiple family building per year, being \$103.78 per SA Residence in a two-family or multiple family building per quarter;
  - b) Year Two (2) of this Agreement:
    - i) \$569.70 per single family SA Residence per year, being \$142.43 per single family SA Residence per quarter
    - ii) \$425.50 per SA Residence in a two-family or multiple family building per year, being \$106.38 per SA Residence in a two-family or multiple family building per quarter;
  - c) Year Three (3) of this Agreement:
    - i. \$583.90 per single family SA Residence per year, being \$145.98 per single family SA Residence per quarter
    - ii. \$436.10 per SA Residence in a two-family or multiple family building per year, being \$109.03 per SA Residence in a two-family or multiple family building per quarter;
  - d) Year Four (4) of this Agreement:
    - i. \$598.50 per single family SA Residence per year, being \$149.63 per single family SA Residence per quarter
    - ii. \$447.00 per SA Residence in a two-family or multiple family building per year, being \$111.75 per SA Residence in a two-family or multiple family building per quarter;
  - e) Year Five (5) of this Agreement
    - i. \$613.50 per single family SA Residence per year, being \$153.38 per single family SA Residence per quarter
    - ii. \$458.20 per SA Residence in a two-family or multiple family building per year, being \$114.55 per SA Residence in a two-family or multiple family building per quarter;
  - f) Fees paid under Sections 4.3 a), b), c), d), or e), will be prorated from the date of the registration of any required subdivision plan.
- 4.4 During the term of this Agreement, the sewage disposal fees, for the immediately preceding three (3) months, will be invoiced by KWSC to the RDEK in April, July, October and January and each invoice shall be paid by the RDEK within thirty (30) days after it is received. The invoice shall separately show each of the amounts being invoiced under 4.3.
- 4.5 The RDEK shall pay for the amount according to the fee structure set out in Section 4.3, unless it is shown to the satisfaction of a Qualified Professional chosen by KWSC that the quantity of sewage measured at the Meter arose from an accident to or malfunctioning of meter, pipes or fitting which are the property of and/or are serviced by KWSC.
- 4.6 In the absence of and/or in the event of malfunction of the Meter, it is agreed that monitoring of pump run times and outlet pressures of the pumps within the SA lift station in conjunction with the manufacturer's published performance curves, will be used to establish the volume of sewage discharged by the RDEK. This method shall be deemed to have the same meaning as Meter as

referenced elsewhere in this agreement. The RDEK shall maintain accurate records of pump run times for all RDEK lift stations in the SA on not less than a weekly basis.

## **5.0 RECORDS AND MONITORING**

- 5.1 The Parties acknowledge and agree to monitor the provision and use of sewage disposal service which will be satisfied by the exchange of documentation and periodic meetings.
- 5.2 KWSC will provide written documentation to the RDEK to confirm the capacity of the KWSC System to provide the sewage disposal service required under the Agreement.
- 5.3 The RDEK will, upon request from KWSC, provide written documentation to KWSC confirming the number of connected users receiving sewage disposal service within the SA and the corresponding sewage generation permitted under the Agreement.
- 5.4 The Parties will prepare the required documentation and provide it to the other Party on a quarterly basis and within fifteen (15) calendar days of end of the quarter.
- 5.5 The Parties will prepare the required documentation and provide it to the other Party on request, notwithstanding that RDEK shall immediately advise KWSC of any new user connections.

## **6.0 KWSC SYSTEM**

- 6.1 Subject to the terms and conditions of this Agreement, KWSC will accept sewage generated from the RDEK System into the KWSC System and shall treat and dispose of such sewage at the KWSC sewage treatment and disposal facilities from the Commencement Date.
- 6.2 KWSC will maintain the KWSC System in a manner which complies with all governing laws, standards and guidelines, including the current edition of the following:
  - a) ISC Water and Wastewater Policy;
  - b) ISC Program Directives and Standards;
  - c) ISC Level of Service Standards;
  - d) ISC Design Guidelines for First Nation Sewage Works; and
  - e) ISC Protocol for Centralized Wastewater Systems in First Nation Communities.
- 6.3 KWSC will cause the KWSC System to be designed and inspected during construction by KWSC's Qualified Professional.
- 6.4 KWSC shall provide and maintain the Meter, at the Connection Point, to measure and record the sewage generated by the RDEK pursuant to this Agreement.

## **7.0 RDEK SYSTEM**

- 7.1 The RDEK acknowledges and agrees that it is a condition of the connection referred to in Section 3.1, and the provision of sewage disposal service pursuant to this Agreement, that the RDEK System be constructed, repaired, operated and maintained in accordance with the usual engineering standards of KWSC, and in particular the standards used by KWSC for the construction, repair, operation and maintenance of the KWSC System, as adopted and amended by KWSC from time to time, and any applicable federal, provincial, and local government laws, regulations, codes and standards. For greater clarity, KWSC currently utilize the latest version of the MMCD, supplemented by the KWSC Water Tariff.
- 7.2 The RDEK will adopt and make reasonable efforts to enforce bylaws governing the use of the RDEK System which are consistent with bylaws of KWSC related to effluent discharge, including a sewage source control and sewer use bylaw(s).
- 7.3 The RDEK will meet the standards and conditions for effluent discharge established under the enactments, which govern what sewage may, or may not be discharged into the KWSC System.
- 7.4 KWSC shall not be responsible for the construction, repair, operation or maintenance of the RDEK System or its use or any costs associated therewith.
- 7.5 If the RDEK System is not constructed, repaired, operated and maintained as provided in Section 7.1 or if there is a breach of any federal, provincial or local government law or regulation referred to in such section, then once KWSC is aware of such non-compliance it shall immediately notify the RDEK of such and provide the RDEK with reasonable notice in writing to remedy the lack of construction, repair, operation, maintenance or the breach. If the RDEK has not taken reasonable steps to remedy the situation prior to the expiry of the notice given, KWSC may cease to accept the discharge of sewage from the RDEK System at the Connection Point until the necessary remedial steps are taken.

## **8.0 PAYMENT OF COSTS**

- 8.1 RDEK shall be responsible for all RDEK costs arising from this Agreement and any cost related to meeting RDEK obligations as set out in this Agreement.
- 8.2 Except as provided for in Sections 4.3, 4.5, and 12, KWSC shall be responsible for all KWSC costs arising from this Agreement and any costs related to meeting KWSC obligations as set out in this Agreement.

## **9.0 KWSC COVENANTS**

- 9.1 So long as this Agreement remains in force, KWSC will:
- a) Cause the corporate existence of KWSC to be maintained, and not change or permit a change in the beneficial ownership and control of KWSC;
  - b) Employ, retain or otherwise engage as necessary for the operation and maintenance of the KWSC System, and to provide the services set out in this Agreement, the service of employed persons and/or contracted services being qualified and certified by the



Environmental Operators Certification Program for managing and operating a sewage disposal system;

- c) Consult with RDEK on any material change in the contractor engaged for the operation and maintenance of the KWSC System;
  - d) Use its best efforts to prevent interruption of services pursuant to this Agreement and to minimize such interruption when necessary;
  - e) Maintain comprehensive general liability insurance coverage with the inclusive limits of liability being no less than \$5 million for each occurrence of bodily injury or property damage and \$10 million per annum on the KWSC System including liability insurance against the risk of damage to persons or property, including the RDEK system, resulting from the services provided to the RDEK pursuant to this Agreement, and will add KWSC and the RDEK as additional named insureds under such policy; and
  - f) Upon the RDEK's request, permit RDEK reasonable access to inspect that portion of the KWSC System used for sewage disposal services provided for in this Agreement.
- 9.2 Upon the request of RDEK, KWSC will make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instrument and assurances to ensure compliance on a "best efforts" basis under this Agreement including the provision of temporary measures until such time as permanent solutions are implemented.
- 9.3 Immediately or as soon as practicable, KWSC will advise the RDEK of any deficiency or problem related to the KWSC System or the services provided pursuant to this Agreement that may adversely affect either the RDEK System or the integrity of the sewage disposal services. Further, the KWSC shall disclose to the RDEK all information known to KWSC about the reason for the deficiency or problem, location of problem, remedial steps being taken, and schedule for restoration of service. The RDEK shall be solely responsible for notification of all RDEK sewage collection customers within the SA and KWSC shall bear no responsibility whatsoever for notification of RDEK customers.

Notification to the RDEK as required in accordance with Section 9.3, during normal business hours (ie. 8:30am – 4:30pm Monday to Friday), shall be to both of the email and phone number listed below:

Regional District of East Kootenay  
Tel: 250-342-0063  
Email: [engineeringdept@rdek.bc.ca](mailto:engineeringdept@rdek.bc.ca)

- 9.4 In the event that KWSC enters into negotiations with a third party to provide additional sewage disposal capacity off Reserve and within RDEK, KWSC shall notify RDEK in writing and grant RDEK the right of first refusal for that additional capacity on reasonable terms and conditions, which such terms and conditions are no less favourable than those being offered to the third party. This right of first refusal is open for one hundred and eighty (180) days from the date of the written notice and if RDEK does not accept or decline the offer in writing within that one hundred and eighty (180) days, it is deemed to have declined the additional capacity.

## **10.0 RDEK COVENANTS**

10.1 So long as this Agreement remains in force, RDEK will:

- a) Maintain, at its own expense, the RDEK System such that it remains in good working order and complies with all applicable laws, standards, codes and regulations;
- b) Pay all sums of money due and owing pursuant to this Agreement promptly, regardless of RDEK's inability, for whatever reason, to utilize the services specified in this Agreement;
- c) Maintain comprehensive general liability insurance coverage with the inclusive limits of liability being no less than \$5 million for each occurrence of bodily injury or property damage and \$10 million per annum on all of the RDEK System, including liability insurance against the risk of damage to the KWSC System or the ground water or aquifer on the Reserve caused by the RDEK system, and will add KWSC as additional named insureds under such policy; and
- d) In the event that the RDEK is using all the sewage disposal capacity provided under this Agreement, it will not obtain any sewage disposal service from any person other than KWSC for the SA unless and until it has first offered to acquire such additional sewage disposal service from KWSC on reasonable terms and conditions and KWSC has declined such offer, and always on the condition that obtaining the additional sewage disposal service will not undermine or negatively impact the amount of sewage disposal services provided under this Agreement. KWSC has ninety (90) days from the date of the offer to acquire additional services to accept or decline the offer in writing. If KWSC fails to respond in writing within the ninety (90) days it is deemed to have declined the offer to acquire.

10.2 Upon the request of KWSC, the RDEK will make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances to ensure compliance on a "best efforts basis" under this Agreement including the provision of temporary measures until such time as permanent solutions are implemented.

10.3 During both the design and construction phases of the RDEK System, RDEK will cause all of its contractors, agents and servants to provide to KWSC all information, specifications and documents that relate to the RDEK System that KWSC reasonably requires to assist KWSC with the design and construction of the KWSC System.

## **11.0 ACCESS**

11.1 Subject to Section 11.2, the RDEK hereby consents to KWSC, entering onto the SA to inspect the RDEK System to determine whether or not the usual engineering standards of KWSC, as adopted and amended by KWSC from time to time, and federal, provincial and municipal laws and regulations are being met.

11.2 The consent provided in Section 11.1 is subject to the following:

- a) KWSC shall exercise its rights under this section in a reasonable manner so as to minimize inconvenience to the residents or other occupants of the SA and to minimize any damage to the SA;
- b) KWSC shall not exercise such of its rights under this section as can be reasonably foreseen to be likely to cause irreparable damage to the RDEK System without first obtaining the written consent of the RDEK except in an emergency; and
- c) KWSC will notify the RDEK in writing at least forty-eight (48) hours before exercising the access rights in this Section 11, except in an emergency.
- d) KWSC hereby consents to the RDEK, having access to and reading the Meter as and when reasonably required by RDEK. The RDEK agrees to provide KWSC with reasonable notice of its intention to access and read the Meter.

## **12.0 FORCE MAJEURE**

### **12.1 If during this Agreement:**

- a) The sewage disposal capacity available from the KWSC System becomes such that KWSC is unable to treat the sewage generated within the SA and deliverable to the Connection Point without incurring annual costs in excess of ten percent (10%) of the aggregate annual sewage disposal fees paid to KWSC for the provision of sewage disposal services;
- b) There is a failure of the KWSC System resulting from any cause whatsoever, excluding normal wear of any components, which cannot be rectified for a cost less than ten percent (10%) of the aggregate annual sewage disposal fees paid to KWSC for the sewage disposal services; or
- c) There is a change in standards imposed by legislation which changes require any kind of upgrading or other expense, the annual debt servicing costs of which exceeds ten percent (10%) of the annual fees paid to KWSC for the sewage disposal services;

then KWSC will, in the manner provided for in Section 12.2 immediately notify the RDEK of such circumstance.

### **12.2 In the event of any of the circumstances set out in Section 12.1, KWSC shall deliver to RDEK a comprehensive summary of the circumstances and the estimated costs to resolve the problem including the financial solution and related additional fee which KWSC proposes to apply reasonably and fairly amongst all those receiving sewage disposal services from the KWSC System, both on and off the Reserve.**

### **12.3 If the RDEK objects to either the proposed resolution or the rate structure set out in a notice provided under Section 12.2, it will provide to KWSC within sixty (60) days of receiving notice under Section 12.2, written notice of its objections, including suggested alternative solutions. If the RDEK has not provided such notice within the sixty (60) days, it will be deemed to have agreed to pay the additional fees set out in the notice provided under Section 12.2.**

- 12.4 Unless notice is received from the RDEK pursuant to Section 12.3, KWSC will arrange for the repair or upgrading of the KWSC System, continue to supply services in accordance with the Agreement and charge the RDEK for such repair or upgrading in the manner set out in the notice provided under Section 12.2.
- 12.5 In the event that the RDEK has provided KWSC with notice pursuant to Section 12.3, the Parties agree to use their best efforts to reasonably resolve the problems identified in Section 12.2. In the event that the Parties have not been able to reasonably resolve this matter within sixty (60) days, the matter will be resolved pursuant to the dispute resolution procedure set out in Section 15.
- 12.6 In the event there is a failure of the RDEK System or damage to the RDEK System resulting from an act of God, and through no fault of RDEK, which failure or damage cannot be remedied within seventy-two (72) hours, RDEK may, at its option and at its own expense:
- a) Retain a Qualified Professional to certify and provide that:
    - (i) The damage or failure did not arise through the fault of RDEK or negligence to maintain the RDEK System;
    - (ii) The damage or failure could not reasonably be remedied within seventy-two (72) hours; and
    - (iii) An estimate of the number of days required to remedy the damage or failure.
  - b) Give notice in writing to KWSC, enclosing a copy of the Qualified Professional's certification pursuant to Section 12.6 a) that it wishes to invoke this section.
  - c) In the event RDEK gives notice pursuant to Section 12.6, the fees due and owing pursuant to this Agreement may, by agreement of the Parties, be suspended and not payable for the shorter of the following periods:
    - (i) Sixty (60) days; or
    - (ii) The number of days stated by the Qualified Professional required to remedy the damage or failure.
  - d) In the event the Parties agree pursuant to Section 12.6 (c) to suspend the fees due and owing under this Agreement, KWSC may shut down the sewage disposal services during the period fees payable by the RDEK are suspended.

### **13.0 INTERRUPTION OF SERVICE**

- 13.1 Subject to Section 13.2, KWSC may temporarily interrupt the provision of sewage disposal services to the SA for the following reasons:
- a) To carry out scheduled work related to the construction, maintenance, repair or replacement of the KWSC System; or
  - b) To mitigate or prevent damage resulting from malfunction of the KWSC System or the RDEK System.

- 13.2 KWSC may not, except in the case of an emergency, pursuant to Section 13.1 interrupt the provision of sewage disposal services unless it has provided the RDEK with not less than five (5) working days notice of the interruption, including providing an estimate of the length of the interruption, and always on the condition that it use its best efforts to minimize the length and inconvenience of such interruption.
- 13.3 In the event of an emergency that results in the interruption of service, the Parties will collaborate in the determination of an interim solution that minimizes the length and inconvenience of such interruption and allows for a permanent solution to be implemented.

#### **14.0 DEFAULT AND DISCONTINUANCE**

- 14.1 If any payment is not made as required by this Agreement, the same shall bear interest at the rate of two percent (2%) per month from the date of default in payment.
- 14.2 If there is a default in any payment required to be made to KWSC under this Agreement for a period in excess of ninety (90) days, KWSC may disconnect the RDEK System from the KWSC System. Reconnection of the RDEK System to the KWSC System shall not be made until the payments in default and interest as herein provided have been fully paid.
- 14.3 If the RDEK exceeds any of the maximum volumes of sewage that are set out in Section 3.2, KWSC will immediately notify the RDEK in writing of such, and the RDEK will take immediate steps to reduce sewage discharge within the SA. If the RDEK exceeds any of the peak flows of sewage that are set out in Section 3.2, it will take all reasonable and immediate steps to fix the problem and advise KWSC on the source of the problem and what steps were taken by the RDEK to remedy it.
- 14.4 In addition to Section 14.3, if the RDEK exceeds the peak flows for sewage then KWSC will add to the annual charges and fees invoiced pursuant to Section 4.3 an additional fee and charge for the excess volume or peak flow that exceeds the maximum, equal to the fee otherwise due and owing under this Agreement.
- 14.5 If, upon receiving a notice pursuant to Section 14.3, the RDEK continues to exceed the peak flows for sewage then KWSC may, at its option and upon written notice to the RDEK, either restrict the volume or flow of sewage to the applicable limits or provide notice to the RDEK under Section 14.6.
- 14.6 Subject to Section 15, if the RDEK fails to perform or observe any term, covenant or condition to be performed by it or fails to make any payment required to be made under this Agreement, the RDEK will, as soon as possible after the date of receipt of notice in writing from KWSC of such breach, rectify the breach. Should the breach not be rectified within sixty (60) days after the date of receipt of such notice, KWSC may discontinue the provision of sewage disposal services until such time as the default is rectified. For greater certainty, if the RDEK contests the notification of a breach or contests that it can rectify the breach within sixty (60) days after the date of receipt of such notice, then the matter will be resolved in the manner provided for in Section 15.
- 14.7 Subject to Section 15, if KWSC fails to perform or observe any term, covenant or condition to be performed by it then KWSC will, as soon as possible after the date of receipt of notice in writing from RDEK of such breach, rectify the breach. Should the breach not be rectified within sixty (60)

days after the date of receipt of such notice, RDEK may terminate this Agreement by giving notice in writing thereof to KWSC. Any right of action arising prior to the breach or arising out of any breach shall not be prejudiced by termination of this Agreement. For greater certainty, if KWSC contests the notification of a breach or contests that it can rectify the breach within sixty (60) days after the date of receipt of such notice, then the matter will be resolved in the manner provided for in Section 15.

- 14.8 If this Agreement is terminated under Section 14.7, then KWSC will immediately provide the RDEK with an invoice for the sewage disposal services as set out in Sections 4.3, 4.4 and 4.6 herein and the RDEK will pay the invoice immediately upon its receipt and KWSC thereafter shall disconnect the RDEK System from the KWSC System.
- 14.9 If this Agreement is terminated under Section 14.7, KWSC will take, at the RDEK's expense, all necessary steps to disconnect the RDEK System at the Connection Point.

## **15.0 DISPUTE RESOLUTION**

- 15.1 If a dispute arises between the Parties relating to or arising out of this Agreement, the Parties agree to use the following procedure before any Party pursues any other available remedy:
- a) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt, in good faith, to negotiate a resolution of the dispute;
  - b) If, within fourteen (14) days after such meeting, or such further period as is agreeable to the Parties, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of mediation;
  - c) The Parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the BC International Commercial Arbitration Centre if they have been unable to agree upon such appointment within twenty (20) days from the conclusion of the period provided for in Section 15.1 b); and
  - d) The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days. If the Parties are not successful in resolving the dispute through the mediation, then the Parties agree that the dispute shall be settled by arbitration in accordance with the *Arbitration Act (SBC 2020)* as amended. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law.
- 15.2 Unless otherwise ordered by the arbitrator, the costs of any mediation or arbitration shall be shared equally between the Parties. Such costs shall not include costs incurred by a Party for representation by legal counsel.
- 15.3 The Parties agree that during the time a dispute is being resolved pursuant to this Section 15, the services provided and the fees charged pursuant to this Agreement will continue as provided and charged on the day such dispute arose, provided always that KWSC is under no obligation to provide sewage disposal services in addition to the annual volume and peak flows set out in Sections 3.2. The Parties further agree that should the outcome of mediation or arbitration provided

for in this Article result in an increase or decrease in fees charged under this Agreement, that change, unless otherwise agreed to by the Parties or determined by the arbitrator, will be applied from the day such dispute arose.

## **16.0 RELEASE AND INDEMNITY**

- 16.1 The RDEK shall indemnify and save harmless KWSC from and against all claims, actions, causes of action, suits or other liability resulting from any breach of any provisions of this Agreement to be performed by the RDEK or from the interruption of service to the SA due to normal maintenance, repair or upgrading, acts of God or any other cause beyond the control of KWSC, provided that this indemnification and saving harmless shall not apply in any case where KWSC have been negligent or have behaved in a manner which amounts to willful misconduct, and damage has been caused thereby.
- 16.2 KWSC shall indemnify and save harmless the RDEK from and against all claims, actions, causes of action, suits or other liability resulting from any breach of any provisions of this Agreement to be performed by KWSC, provided that this indemnification and saving harmless shall not apply in any case where the RDEK has been negligent or has behaved in a manner which amounts to willful misconduct, and damage has been caused thereby.

## **17.0 TERM AND OPTION TO EXTEND THIS AGREEMENT**

- 17.1 This Agreement shall commence on the Commencement Date and shall be for a term of five (5) years.
- 17.2 Subject to agreement on new sewage disposal fees as provided in Section 17.3, the Parties may extend the term of this Agreement for successive additional periods of five (5) years each.
- 17.3 On written notice from RDEK to KWSC at least six (6) months prior to the end of the term or the extended term, as the case may be, requesting an extension of the term, KWSC and RDEK will enter negotiations to set the sewage disposal fees to be charged under this Agreement for the proposed extension of the term based on the operation of the KWSC System on a cost recovery basis and including consideration of:
- a) Industry standard reserve accounts;
  - b) Operating costs including utility costs, labour, administration, general maintenance, and operating contingency of 10% of the operating budget; and,
  - c) An appropriate annual rate of return on the KWSC System.

## **18.0 NOTICE**

- 18.1 Any notice, document, statement, report, demand or payment desired or required to be given or made pursuant to this Agreement will be in writing and may be given or made if delivered personally to the Party to whom it is to be given or made, delivered by electronic facsimile transmission or mailed in Canada with postage prepaid and addressed if to

Regional District of East Kootenay  
19 – 24<sup>th</sup> Avenue South  
Cranbrook, BC V1C 3H8

Attention: Chief Administrative Officer  
Facsimile: (250) 489-3498

and if to:

Kinbasket Water & Sewer Company Ltd.  
Suite 3A, 492 Arrow Road  
Invermere, BC V0A 1K3

Attention: Director of Operations  
Facsimile: (250) 341-3683

- 18.2 Any such notice, document, statement, report, demand or payment given or made by facsimile document transmission will be deemed to be given and made to and received by the addressee forty-eight (48) hours after it has been received, excluding weekends and public holidays, on the fourth business day after the mailing of the same, except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed to be given to and received by the addressee when actually delivered to the particular address set out above.
- 18.3 A Party may, from time to time, advise the others by notice in writing of any change of address of the Party giving such notice and from and after the giving of such notice the address therein specified will, for the purpose of this paragraph, be deemed to be the address of the Party giving such notice.

## **19.0 SEVERANCE**

- 19.1 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

## **20.0 NO WAIVER**

- 20.1 No waiver by any Party of a breach or default by another Party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either Party to declare such other Party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such Party of any of its rights against the other Party.

## **21.0 TIME**

- 21.1 Time will be of the essence of this Agreement.



## 22.0 ASSIGNMENT

- 22.1 Except as provided in Section 22.2, no Party may assign any of its rights or obligations under this Agreement except with the prior written consent of the other Parties which consent may not be unreasonably withheld.
- 22.2 The RDEK may assign all, but not part, of its respective rights and obligations under this Agreement to another local government that replaces or succeeds it as the local government with jurisdiction over the SA.
- 22.3 The KWSC may assign all, but not part, of its respective rights and obligations under this Agreement to another sewerage company incorporated by the Shuswap Indian Band that replaces or succeeds it as the utility operator.

## 23.0 GOVERNING LAW

- 23.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of Canada and British Columbia as they apply.

**IN WITNESS WHEREOF** the Parties have executed this Agreement by their authorized signatories or affixed their respective corporate seals, attested by the hands of their respective Officers duly authorized on their behalf.

The Corporate Seal of **REGIONAL DISTRICT OF EAST KOOTENAY** was hereunto affixed in the presence of:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chief Administrative Officer

(c/s)

The Corporate Seal of **KINBASKET WATER & SEWER COMPANY LTD.** was hereunto affixed in the presence of:

\_\_\_\_\_  
Authorized Signatory

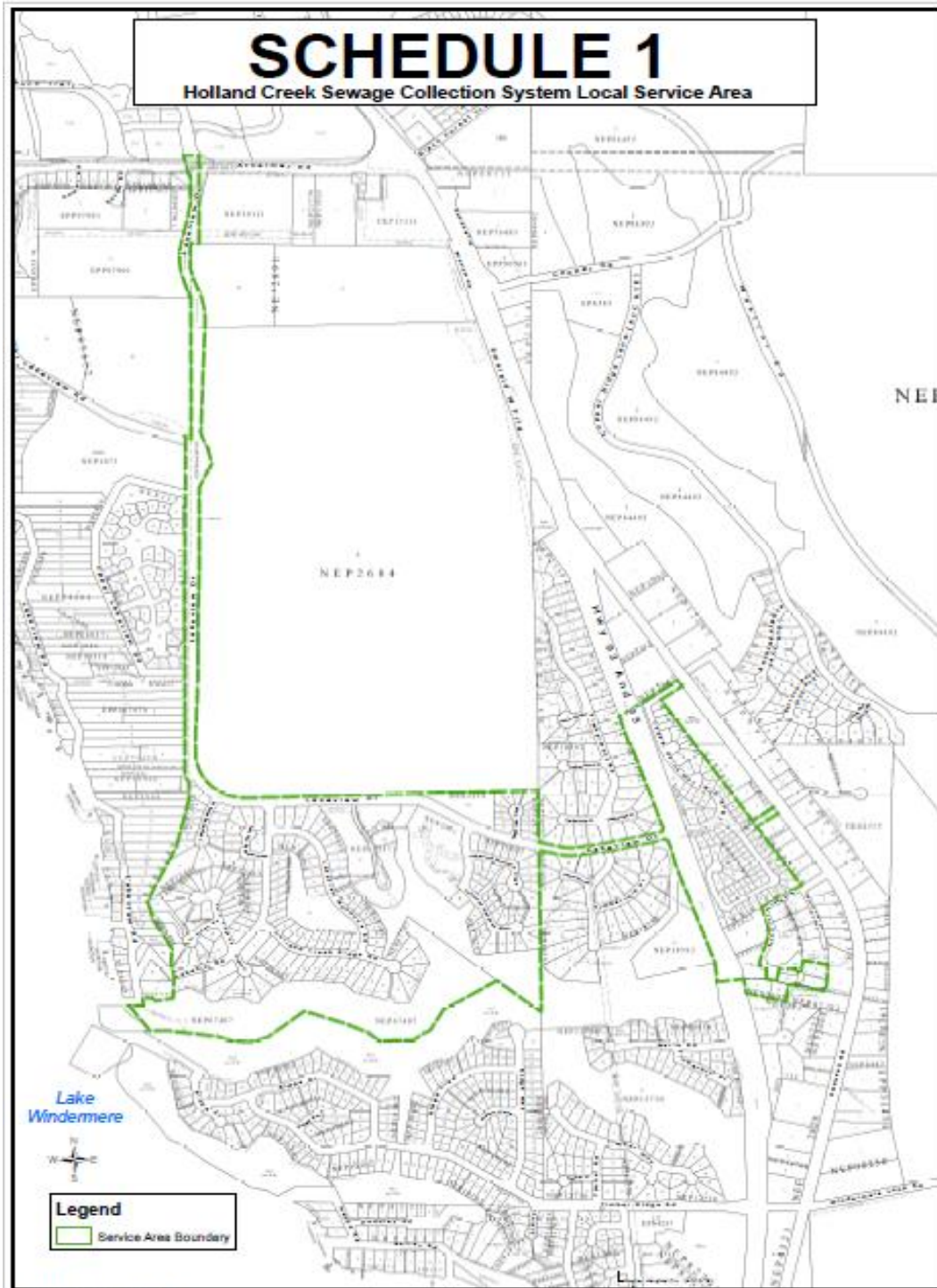
\_\_\_\_\_  
Authorized Signatory

(c/s)

## SCHEDULE 1

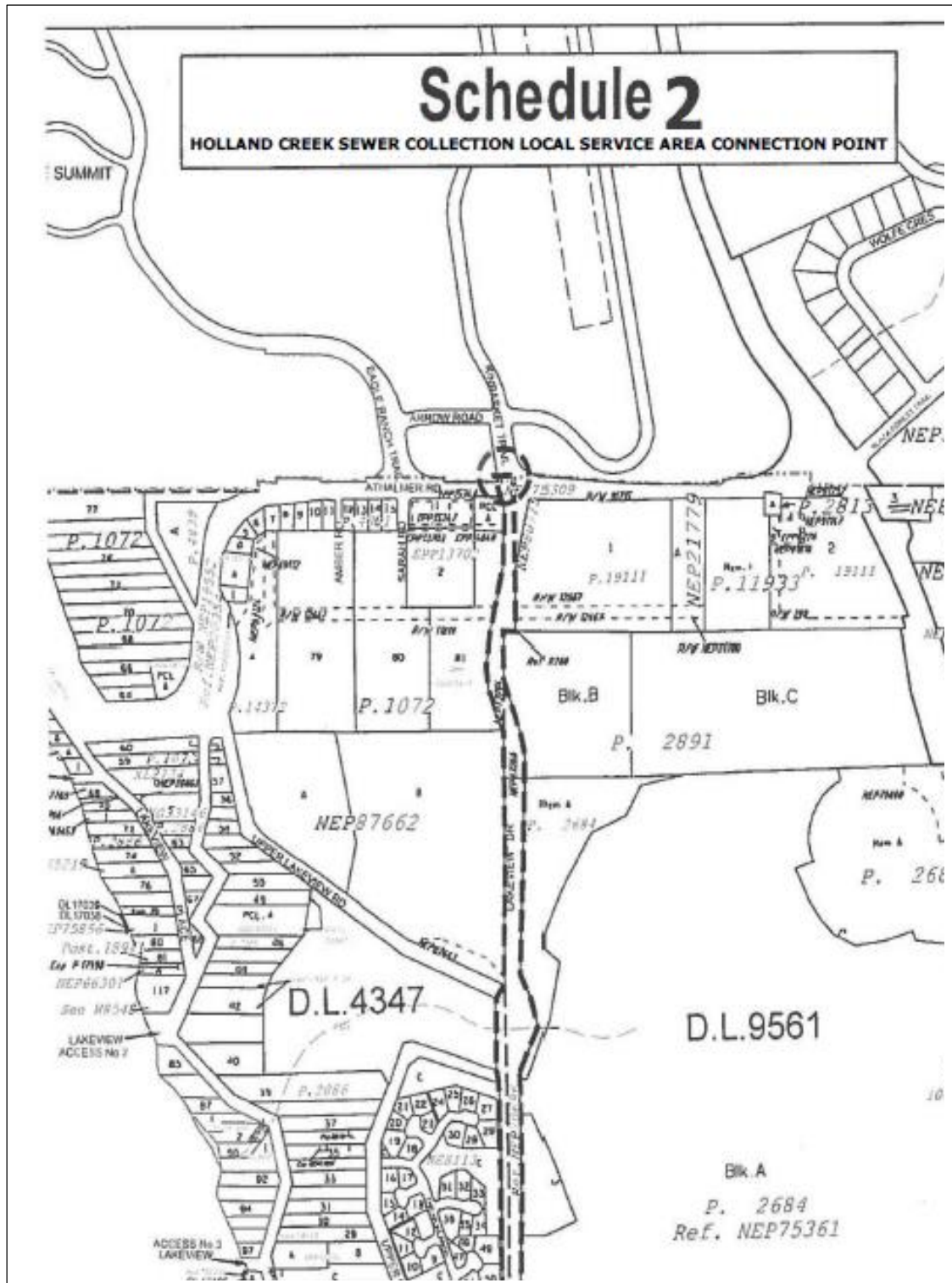
### LANDS

The Legal Description of Lands within the Holland Creek Sewage Collection System Local Service Area are as outlined on the map attached hereto.



## SCHEDULE 2

### CONNECTION POINT



### **SCHEDULE 3**

#### **MODIFICATION AND EXTENSION AGREEMENT**

**THIS MODIFICATION AND EXTENSION AGREEMENT** dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**BETWEEN:**

**REGIONAL DISTRICT OF EAST KOOTENAY**, in the Province of British Columbia and having its office at 19 – 24<sup>th</sup> Avenue South, in the City of Cranbrook in the Province of British Columbia

(hereinafter referred to as the “RDEK”)

OF THE FIRST PART

**AND:**

**KINBASKET WATER & SEWER COMPANY LTD.**, a company registered under Inc. No. 495624 in the Province of British Columbia and having its registered and records office at P.O. Box 790 in the District of Invermere, in the Province of British Columbia

(hereinafter referred to as the “KWSC”)

OF THE SECOND PART

**WHEREAS:**

- A. The parties entered into a Master Sewage Servicing Agreement dated for reference \_\_\_\_\_, 2021 (the “Contract”).
- B. Pursuant to Bylaw No. \_\_\_\_\_, the RDEK has amended Bylaw No. 1503 to extend the Holland Creek Sewage Collection System to include the lands and premises legally described as \_\_\_\_\_.
- C. Pursuant to Section 2 of the Contract, the parties desire to modify and extend the terms of the Contract as set out in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of ONE DOLLAR (\$1.00) now paid by each of the parties to the other, the receipt and sufficiency of which is hereby acknowledged, and the terms and conditions as set forth herein, the parties hereto agree as follows:

- 1. The definition of “Lands” in Section 1.1 h) of the Contract is amended to read as follows:

“**Lands**” means those lands located within the SA, which are more particularly described in Schedule 1 of this Modification and Extension Agreement.”

2. The definition of “SA” in Section 1.1 i) of the Contract is amended to read as follows:  
  
“SA” means the Holland Creek Sewage Collection System Local Service Area
3. Subsections 3.2 a) and b) of the Contract are amended to read as follows:  
  
“3.2 Subject to the terms and conditions of this Agreement, KWSC will accept from the RDEK, at the Connection Point, sewage generated solely within the SA, of the following amounts of domestic sewage:  
  
a) Average Flow: \_\_\_\_\_ cubic meters per day;  
  
b) Total Annual Volume: \_\_\_\_\_ cubic meters per year.”
4. Section 3.5 of the Contract is amended to read as follows:  
  
“3.5 The Parties acknowledge and agree that KWSC has not made any representations on whether the sewage disposal capacity provided under this Agreement is adequate or sufficient to meet the sewage service requirements of the SA, and that the RDEK has not relied upon any representations by KWSC regarding such quantities.  
  
Nevertheless, the Parties acknowledge that the sewage disposal regime outlined in Section 3.2 anticipates providing sewage disposal to the following:  
  
a) \_\_\_\_ single family SA Residences;  
b) \_\_\_\_ two-family or multiple family SA Residences;  
c) \_\_\_\_ un-used services anticipating future construction.  
  
Furthermore, the sewage disposal regime outlined in Section 3.2 takes into account infiltration and inflow conditions.”
5. A one-time “Connection Fee” of \$5,500.00 per single family SA Residence and/or two-family or multiple family SA Residence equivalence as defined in Schedule 1 of this Modification and Extension Agreement shall be paid into the KWSC Replacement and Maintenance Reserve Fund. Such fee will be subject to adjustment from time to time with KWSC providing ninety (90) days notice to RDEK of such proposed adjustment.
6. Except where hereinafter expressly modified or amended by this Modification and Extension Agreement, all other terms of the Contract shall remain in full force and effect unaltered.

**IN WITNESS WHEREOF** the Parties have executed this Agreement by their authorized signatories or affixed their respective corporate seals, attested by the hands of their respective Officers duly authorized on their behalf.

The Corporate Seal of **REGIONAL DISTRICT OF EAST KOOTENAY** was hereunto affixed in the presence of:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chief Administrative Officer

(c/s)

The Corporate Seal of **KINBASKET WATER & SEWER COMPANY LTD.** was hereunto affixed in the presence of:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

(c/s)