Diane Roy
Director, Regulatory Affairs - Gas
FortisBC Energy Inc.

16705 Fraser Highway
Surrey, B.C. V4N 0E8
Tel: (604) 576-7349
Cell: (604) 908-2790
Fax: (604) 576-7074
Email: diane.roy@fortisbc.com
www.fortisbc.com

Regulatory Affairs Correspondence
Email: gas.regulatory.affairs@fortisbc.com

June 18, 2012

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Erica M. Hamilton, Commission Secretary

Dear Ms. Hamilton:

Re: FortisBC Energy Inc. ("FEI")

Application for Approval of Operating Terms Between the District of Coldstream and FEI

Reply Argument Submissions of FEI

On February 27, 2012, FEI filed the Application as referenced above. In accordance with Commission Order No. G-32-12 setting out the Regulatory Timetable for the review of the Application, FEI respectfully submits the attached Reply Argument Submissions.

If there are any questions regarding the attached, please contact Gord Schoberg at 604-592-7534.

Yours very truly,

FORTISBC ENERGY INC.

Original signed by: Ilva Bevacqua

For Diane Roy

Attachment

cc (e-mail only): Mr. James Yardley, Murdy McAllister, Barristers & Solicitors
District of Coldstream

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF the *Utilities Commission Act,*
R.S.B.C. 1996, Chapter 473 (the "*Act*")

and

An Application by FortisBC Energy Inc.

for Approval of Operating Terms Between the District of Coldstream and FEI

REPLY SUBMISSIONS OF

FORTISBC ENERGY INC.

June 18, 2012

TABLE OF CONTENTS

PART ONE: INTRODUCTION..... 1

PART TWO: ORGANIZATION OF SUBMISSION..... 1

PART THREE: GENERAL REMARKS 2

PART FOUR: CONCLUSION.....12

REPLY SUBMISSIONS OF

FORTISBC ENERGY INC.

PART ONE: INTRODUCTION

1. The following submissions are made in reply to submissions made by the District of Coldstream ("Coldstream", the "District" or "Municipality") dated July 11, 2012 with respect to FEI's application to the British Columbia Utilities Commission (the "Commission) for terms under which FEI may operate its gas system in the streets and other public places of Coldstream (the "Application").

PART TWO: ORGANIZATION OF SUBMISSION

2. FEI has taken the approach of addressing the broader points made by Coldstream in its submissions, rather than addressing each provision of the Operating Terms that are contentious. As such, FEI relies on its previous submissions contained in FEI's Application to the Commission dated February 27, 2012, and FEI's previous submissions filed in this Application on June 11, 2012 (the "Final Submission").

3. This Reply Submission is organized as follows:

(a) General remarks with respect to broad policy considerations respecting the Operating Terms;

(b) A reply to Coldstream's remarks on some specific provisions that FEI wishes to address; and

(c) Book of Authorities containing cited references.

PART THREE: GENERAL REMARKS

I. CONSISTENCY IN THE TERMS UNDER WHICH FEI OPERATES IN MUNICIPAL STREETS IS IN THE PUBLIC INTEREST.

4. Coldstream urges the Commission to consider the points in dispute on the basis of their individual merits and adjudicate accordingly. FEI agrees with this approach. However, FEI submits that Coldstream has not demonstrated that the merits of Coldstream's position on each point are such that it should outweigh the merits of FEI's position on the various points. One of the underlying themes of FEI's position on the merits of each point is consistency. FEI submits that consistency is not the only factor to consider when determining the public interest, but it is an important one. The Ontario Energy Board (the "OEB") articulated this policy consideration in a decision with respect to disagreement between the Consumers' Gas Company and the Corporation of the City of St. Catharines in respect of the indemnity clause in a franchise agreement. The OEB cited with approval an earlier decision of the OEB with respect to the same provision:

> "The Board also expressed the opinion that:
>
> > "…there is merit in standardizing the terms and conditions of gas franchise agreements in general and the indemnity provisions of such agreements in particular, in order to ensure uniformity in the treatment accorded to the various municipalities served by Consumers' so as to eliminate the cross-subsidization among customers that would result from averaging of costs if the treatment of the municipalities was not uniform."
>
> The Board is not bound by precedent; nevertheless it can find nothing in the evidence or arguments presented in this hearing which would warrant a decision contrary to that reached in an earlier hearing with reference to the same clause. The Board finds the indemnity clause proposed by Consumers' is appropriate in this case and will approve it as a term of the franchise agreement."[1]

5. Alberta Energy and Utilities Board (the "EUB") similarly articulated this policy consideration:

> "Overall, the Board supports the use of a standard franchise agreement. The Board considers that the use of a standard franchise agreement throughout the province could

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[1] Ontario Energy Board, Decision dated December 22, 1981 pages 5-6.

> help clarify and standardize the rights and responsibilities of both utilities and municipalities with respect to the provision of utility services. Such an agreement would also make it easier for both utilities and municipalities to negotiate their franchise agreements at the time of renewals. A standard franchise agreement could be of particular assistance to smaller municipalities, which may not have the same level of resources available to review franchise agreements as larger municipalities."[2]
>
> "…. As discussed earlier, the Board considers the use of a standard agreement will be beneficial to all parties."[3]

6. The District of Coldstream is correct that the EUB also stated that that the utilities and municipalities should have the ability to modify standard agreements if they wish to. However, the EUB's interest in respecting freedom of contract does not mean that the public interest demands different and inconsistent operating terms in a utility's service territory.

7. The FortisBC Utilities operate in 135 communities. As such, for all the reasons FEI has provided in its Application and despite Coldstream's assertions, FEI is not unnecessarily or unreasonably flexible in its efforts to bring as much consistency among the operating agreements that it can. Coldstream has submitted that a "one size fits all" approach is not appropriate but it has not demonstrated the particular local conditions in Coldstream that make the proposed Operating Terms unreasonable. All Coldstream has done in its submissions is assert its preferences. Further, Coldstream has requested changes to the Operating Terms that increase costs to FEI's ratepayers but it has not offered any concessions that provide value to FEI's ratepayers in exchange. Nonetheless, FEI submits that FEI, in general with respect to negotiations of operating agreements, has been flexible in recognizing municipal concerns by agreeing to substantive changes where FEI has identified that the concerns raised by a municipality in its negotiations are shared by others and where such changes do not diminish the value of the agreement to FEI's ratepayers. In addition, with respect to Coldstream's specific preferences with respect to the Operating Terms, FEI has been flexible in accepting many of Coldstream's changes, namely changes in Sections 6.1.3, 6.2, 9.2, 11.2, 17.7 and a

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[2] Standard Electric Franchise Agreement with Atco Electric Ltd. and Utilicorp Networks Canada, Alberta Urban Municipalities Association, EUB Decision 2001-52 (June 19, 2001) pages 2-3

[3] Ibid, page 17

new Section 10.4. The specific reasons why FEI believes these changes to the specific provisions are in the public interest are described in FEI's Application and other submissions.

8. With respect to Coldstream's submissions in Section 31 (c) at page 8, FEI cannot readily find an instance where it told the Commission that the 2006 Form of Agreement was "approved" by the Commission. FEI recognizes that FEI and the Commission have both referred to this form of agreement as the "UBCM form of Agreement". Given the UBCM's involvement as a facilitator of the form of agreement, FEI submits that it was not inappropriate or misleading to use this description as a way of distinguishing the form of agreement from the one form that had been approved by the Commission in the early 2000's.

9. In order to guide FEI's negotiations with other municipalities going forward, if the Commission accepts Coldstream's submissions and makes changes to the Operating Terms that are different from the Operating Terms proposed by FEI in this Application, FEI requests that the Commission identify which changes the Commission decides are appropriate given the particular local conditions or preferences of Coldstream only, and which changes the Commission decides have a broader application and may be appropriate in new operating agreements that FEI enters into going forward with other municipalities.

II. THE LIMITS THAT THE OPERATING TERMS PLACE ON COLDSTREAM'S AUTHORITY ARE NARROW AND APPROPRIATE.

10. Coldstream has repeatedly argued that FEI should not be exempt from Coldstream's bylaws. FEI however submits that Coldstream misunderstands, and therefore greatly exaggerates, the scope of the Operating Terms and the restriction that the Operating Terms place on its authority. FEI submits that the Operating Terms do not exempt FEI from compliance with Coldstream's bylaws. These Operating Terms are about the gas system that is placed in Coldstream's Public Places (as that term is defined in the Operating Terms). They do not apply to the whole of FEI's business. Further, all the Operating Terms do is exempt FEI ***in its use of Public Places*** from compliance with Coldstream's bylaws ***to the extent*** that such bylaws conflict with other legislation governing FortisBC or conflict with the Operating Terms. Nonetheless, as explained below, the Operating Terms expressly do include consideration of Coldstream's bylaws.

11. To remove the discussion from the abstract to the specific, FEI refers to Coldstream's Submission at paragraph 41. Coldstream submits that Section 5.1, along with Section 12, could create an exemption for FEI from complying with building permit and Building Code requirements for any building that FEI should construct in the District. Coldstream has submitted that FEI has failed to demonstrate that it is in the public interest that FEI be exempt from Coldstream's bylaw. However, FEI submits that it is Coldstream that has failed to demonstrate why FEI should comply with Coldstream's building bylaw when it installs a gas pipeline in Coldstream's streets.

12. Remembering that Section 5.1, Section 12 and the Operating Terms as a whole, apply to FEI's right to maintain and install Company Facilities in the Public Places (and do not encompass FEI's operations in other places in the District), FEI submits the public interest requires that FEI's rights to install Company Facilities in the Public Places not be subject to Coldstream's building bylaw and the Building Code of British Columbia.

13. Coldstream's Building Bylaw is broadly cast to include "structures" and "buildings". Structure "means a construction or portion thereof of any kind, whether fixed to, supported by or sunk into land or water, but specifically excludes landscaping, fences, paving and retaining structures less than 1.2 metres (4 feet) in height."[4] Applying this definition to the facilities that FEI installs in Public Places, a pipeline is a "construction" of some "kind", "sunk into land". With respect to "buildings", Coldstream's Building Bylaw incorporates the definition of building contained in the BC Building Code. Under the Building Code, a "building" means "any structure used or intended for supporting or sheltering any use or occupancy". [5] Applying this definition to the facilities that FEI installs in Public Places, a valve assembly or a small regulatory station sometimes has a roof or a lid on over the assembly of pipes and as such could be said to be a "structure used or intended " for "sheltering any use" i.e. sheltering the pipes and valves.

14. As such, a literal, rather than a purposive, construction of the bylaw would include the utility's gas pipelines in the scope of the Building Bylaw, either as falling under the definition of "structure" or "building". FEI does not believe this construction is the correct approach to the construction of Coldstream's Building Bylaw or even that Coldstream intended that its Building

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[4] District of Coldstream Bylaw No. 1442, 2004 as amended, Section 3.1
[5] British Columbia Building Code, 2006 Section 1.4.1.2.

Bylaw apply to the gas system, despite Coldstream's submissions in this Application that it should apply.[6] However, it is a plausible approach that Coldstream could use in asserting its authority over FEI's operations and possibly one that Coldstream now appears to be urging upon the Commission.

15. If Coldstream's Building Bylaw were to be applied to FEI's operations in the Public Places, FEI would be prohibited from any construction, alteration, reconstruction, demolition, removal or relocation of service line, main or other part of the gas system unless FEI held a permit issued by a Building Official even though Building Officials have no expertise or experience in approving or inspecting the design of pipelines.[7] FEI would be required to pay Coldstream between $50 and $150 per building permit application and from $50 up for each building permit issued[8] even though FEI's customers pay Coldstream an operating fee under the Operating Terms. FEI would be required to conform with the Building Code even though the code relevant to the gas system and prescribed under the *Safety Standards Act* and the *Oil and Gas Activities Act* is CSA Z662 and not the Building Code[9]. FEI submits that the public interest is not served by the application of the Building Bylaw or the Building Code to the installation and removal of the Company Facilities that FEI operates in the Public Places.

16. Further, FEI submits that the Operating Terms do include the consideration of municipal bylaws to FEI's use of the Public Places. As an example, FEI refers to Section 6.1.1. of the Operating Terms which state that FEI may perform New Work by giving notice to the Municipality of the plans and specifications showing the location and dimensions of the New Work, FEI's restoration plans, the name of an FEI representative who can be contacted for more information, the projected commencement and completion dates and such other information relevant to the New Work as the Municipality may reasonably request from time to time. Section 6.1.3 allows Coldstream to object to the New Work on a number of grounds, including that the proposed location or design of the New Work does not conform to Municipal Standards. If Coldstream refuses its consent to the New Work, then FEI may not install the New Work until

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6 Coldstream's submissions dated June 11, 2012 at paragraph 43
7 Section 7, District of Coldstream Bylaw No. 1442, 2004 as amended.
8 Appendix 1. District of Coldstream Bylaw no. 1442, 2004 as amended.
9 Section 7, District of Coldstream Bylaw No. 1442, 2004 as amended; Section 3, *Oil and Gas Activities Act*, Pipeline and Liquefied Natural Gas Facility Regulation to the Oil and *Gas Activities Act*; Section 30, Gas Safety Regulation to the *Safety Standards Act*.

the dispute has been resolved through the dispute resolution mechanism that refers the dispute ultimately to the Commission. As such, the Operating Terms do not allow FEI to ride roughshod over municipal concerns or authority in FEI's use of the Public Places. Instead, the Operating Terms incent FEI to work collaboratively with Coldstream.

III. INTERMEDIATE PRESSURE AND TRANSMISSION PRESSURE PIPELINES SHOULD BE INCLUDED IN THE OPERATING TERMS

17. FEI submits the following:

(a) The Commission has jurisdiction to impose terms with respect to moves of the gas system within municipal streets etc. and the costs allocation for such moves.

(b) Section 12 of the Oil and Gas Activities Act does not give a right to Coldstream in respect of any cost allocation for moves of the gas system.

(c) The public interest requires that the intermediate and transmission pressure pipelines be included in the operating terms. Further, the cost allocation proposed by FEI in Section 8.2 of the Operating Terms is in the public interest.

(a) The Commission has jurisdiction to impose terms with respect to moves of the gas system within municipal streets and the cost allocation for such moves.

18. FEI and Coldstream appear to be in agreement that the Commission has broad powers under Section 32. FEI submits that this broad authority allows the Commission to order terms with respect to the intermediate pressure and transmission lines located in the Public Places. Just as the Commission may order terms that FEI must move its distribution pressure pipelines when requested by a municipality, the Commission may also order terms that FEI must move its intermediate pressure and high pressure pipelines when requested by a municipality. FEI strongly refutes Coldstream's suggestion that the Commission cannot order that Section 8.2 of the proposed Operating Terms is "an agreement in writing for the purposes of Section 76(1)(c) of the Oil and Gas Activities Act". The effect of Section 8.2 is the same whether or not this

statement is included. The statement in Section 8.2 of the proposed Operating Terms only clarifies the effect of FEI's agreement to move its pipelines when requested by a municipality, but does not alter the effect of FEI's operating agreement nor of any terms imposed by the Commission.

19. The Commission's jurisdiction to make an order with respect to relocations of the gas system cannot be ousted by Section 12 of the *Oil and Gas Activities Act* General Regulation because Section 12 only becomes applicable if the Oil and Gas Commission issues an order pursuant to Section 76 (1)(d) of the *Oil and Gas Activities Act*. If the Oil and Gas Commission decides that it will not make an order pursuant to Section 76 (1)(d), then Section 12 of the regulations would not apply.

20. Nor does Section 76 (1) of the Oil and Gas Activities Act oust the jurisdiction of the Commission to make orders with respect to construction by municipalities that require the alteration or relocation of gaslines. Section 76 (1) contains no express limits on the jurisdiction of the Commission. Nor can it be implied from the legislation that the legislature intended the Oil and Gas Commission's jurisdiction to approve construction activities by any persons around oil and gas pipelines should limit the Commission. Section 76(1) expressly contemplates that a pipeline permit holder, that is FEI, may agree in writing to construction activities near or over its pipelines. By bringing this Application FEI is agreeing in writing to the terms that the Commission may impose in with respect to the moves of its pipelines within the Public Places. Moreover, the fact that the pipeline permit holder may agree to the crossing makes it clear that the policy behind Section 76(1) is not to limit how consensus between a party wishing to cross a pipeline is reached. This is an example only where the two different jurisdictions of each commission, the Commission's jurisdiction to impose the terms under which a gas utility operates its system in municipal streets and the Oil and Gas Commission's jurisdiction to permit persons to carry out construction near or across oil and gas pipelines, overlap.

21. Indeed, the Commission's jurisdiction over relocations of the gas system is broader than that of the Oil and Gas Commission. As the Oil and Gas Commission's jurisdiction under Section 76 with respect to construction activities and road crossings near pipelines, is primarily with respect to safety of the pipelines, Section 76 (5) requires the approval of the Lieutenant Governor in Council, in order for the Oil and Gas Commission to order a relocation of a pipeline.

(b) Coldstream does not have a right to the cost allocation contained in Section 12 of the Oil and Gas Activities Act General Regulation.

22. As submitted above, Section 12 of the regulation only applies if the Oil and Gas Commission has made an order under Section 76 (1) of the Oil and Gas Activities Act. Moreover, such cost allocation is subject to any order made by the Lieutenant Governor in Council pursuant to Section 75 (6) where the Lieutenant Governor in Council may order a different cost allocation than that contained in Section 12. As such, Coldstream cannot be said to have a right to any allocation of costs.

23. It cannot be said that the legislature considers that in all circumstances the public policy requires that municipalities should not pay for moves of the gas system for two reasons. Firstly, the Legislature must have meant to preserve the different cost allocation provisions contained in the many Operating Agreements FEI has with municipalities when it included Section 76 (1)(c)[10] in the legislation and then when it amended the Legislation to make it more clear that Section 76(1)(c) applies to agreements made by FEI with municipalities. Secondly, in Section 12 of the regulations, cabinet has expressly put into place a mechanism for the Lieutenant Governor in Council to order a different cost allocation than the one contained in Section 12. As such, FEI argues that the Commission is not restricted from determining a cost allocation different than that contained in Section 12 of the Regulations and moreover, as FEI's economic regulator is best equipped to determine the cost allocation that best fits the public interest.

(c) The public interest requires that the intermediate and transmission pressure pipelines be included in the operating terms. Further, the cost allocation proposed by FEI in Section 8.2 of the Operating Terms is in the public interest.

24. FEI submits that it is not in the public interest that the intermediate pressure pipeline that runs within Sarsons Road in Coldstream and the transmission pipeline that crosses College Road be excluded from the Operating Terms. If these pipelines are not included within the Operating Terms, there will be no other terms or agreements that the municipality and FEI can

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[10] Section 76 (1)(c) provides that a pipeline permit holder may agree in writing to construction activities across its pipeline.

look to for guidance with respect to the appropriate notice requirements for installation, use, notice of work, work standards, or facility changes etc. that are included in the Operating Terms.

25. Further, FEI submits that the cost allocation formula contained in Section 8.2 is in the public interest. FEI refers to the submissions in FEI's Final Submission explaining that the cost allocation formula contained in Section 8.2 is in the public interest because it incents the party initiating the construction to cost discipline. These arguments, as to why this cost allocation formula is in the public interest, apply equally to distribution pressure pipeline as well as intermediate pressure pipeline and transmission pressure pipeline. Intermediate pressure pipeline is part of the distribution system and as such, is installed in municipal roads. Transmission pressure pipeline is not installed in municipal roads but is crossed by municipal roads and therefore affected by municipal roads alterations and widening.

26. FEI further submits that if FEI is required to assume the whole of the cost of alterations to the gas system resulting from accommodation of a municipality's roadworks, the costs will be borne by FEI's ratepayers as a whole through FEI's rate revenue requirements. Such a policy leads to the potential for cross subsidization between FEI's urban and rural customers as well as between areas of high growth and areas of low growth.

IV. SPECIFIC REMARKS

27. Section 6.4.4 - The District claims to be seeking a mechanism by which it can undertake restoration of pavement itself should FEI fail to do that work in a timely or satisfactory way. However, the District's proposed wording in the new Section 6.4.4 proposed by it goes much further. In Section 6.4.4 the District requires FEI to be responsible for the Municipality's own restoration work for a period of three years. FEI submits that it is not in the public interest that FEI guarantee the performance of the District's own roadcrews, whether such roadcrews are employees or contractors of the District. When undertaking the work itself, the District is in a much better position than FEI to choose good road construction crews, monitor the road construction crews' performance and seek damages from its own contractors if the work is not completed to the District's satisfaction.

28. Section 6.4.5 - Again, Coldstream submits that it is interested in ensuring that FEI and its contractors carry the WCB insurance already required by law. However, FEI submits that the

new provision proposed by Coldstream goes much further with the effect that it requires FEI to act as prime contractor in all circumstances. FEI submits that this is not appropriate. Instead, should the Commission determine that an Operating Term with respect to WCB insurance is appropriate, that term should provide that FEI and Coldstream shall work together to agree on a process respecting notice of prime contractor by one party to the other in respect of projects in the Public Places.

29. Section 10.5 Environmental Liabilities - Coldstream has requested a new provision 10.5 to require FEI to assume all environmental liability relating to substances that it brings under these Terms. Coldstream argues at paragraph 53 of its submission that it needs this provision in order to be indemnified in the event that Coldstream is subject to administrative or legal sanctions for environmental offences. FEI submits that if Coldstream is subject to administrative or legal sanctions it should be presumed that the regulator who imposed such sanctions on Coldstream thought that it was appropriate that Coldstream be sanctioned for failing act with due diligence. As such, if the Commission determines that the public interest requires a specific provision dealing with environmental liability, that such provision mirror the general indemnity contained in Section 10.1 of the proposed Operating Terms that includes a limit on the indemnity to the extent the Municipality or its employees have contributed to the damages or losses suffered by the Municipality.

30. Section 11.2 - As noted by Coldstream at paragraph 35, FEI failed to change the date for the payment of the Operating Fee from November 1 to March 1 in the revised Operating Terms that FEI filed with its Final Submission. FEI will make such change in the final Operating Terms as ordered by the Commission.

31. Section 12 - FEI refers to Coldstream's submissions at paragraph 54, where the District states that it does not have legal authority to agree to contract out of the application of its bylaws. For the purposes of this Application, the Commission need not determine whether the District has such authority. Instead, FEI submits that the Commission may consider its own jurisdiction under Section 121 which provides that nothing done in or under the Community Charter or the Local Government Act supersedes or impairs a power conferred on the commission or an authorization granted to a public utility. Therefore the Commission may include Section 12 of the Operating Terms as proposed by FEI.

PART FOUR: CONCLUSION

32. FEI submits that the Operating Terms proposed by FEI are in the public interest and respectfully asked that they be approved by the Commission.

All of which is respectfully submitted.

FORTISBC ENERGY INC.

Original signed by: Marie-France Leroi

For: Diane Roy

June 18, 2012

Book of Authorities

BOOK OF AUTHORITIES

INDEX

1. OEB Decision dated December 22, 1981, *Consumers' Gas Company v the Corporation of the City of St. Catharines*

2. *Standard Electric Franchise Agreement with Atco Electric Ltd. and Utiliticorp Networks Canada, Alberta Urban Municipalities Association,* EUB Decision 2001-52 (June 19, 2001)

3. District of Coldstream Bylaw No. 1442, 2004

4. British Columbia Building Code, 2006

Ontario Energy Board

E.B.A. 374

IN THE MATTER OF the Municipal Franchises Act, R.S.O. 1980, C. 309;

AND IN THE MATTER OF a franchise agreement between The Consumers' Gas Company and The Corporation of the City of St. Catharines.

BEFORE: S. J. Wychowanec, Q.C. Vice Chairman and Presiding Member
R. H. Clendining Chairman

April 7 and 8, 1981

REASONS FOR DECISION

Appearances

P. Y. Atkinson	- for The Consumers' Gas Company Ltd.
T. A. Richardson	- for the City of St. Catharines
L. Graholm	- for the Ontario Energy Board

The Application

By an application dated March 19, 1980, The Consumers' Gas Company ("Consumers'") applied to the Ontario Energy Board (the "Board") for an order or orders pursuant to section 10 of the Municipal Franchises Act (the "Act") renewing or extending the current franchise agreement between Consumers' and The Corporation of the City of St. Catharines (the "municipality" or "St. Catharines") which franchise agreement expired on August 1, 1978.

Consumers' also applied for an order under section 10(4) of the Act, pending final disposition of the application.

In support of the application for the latter order, counsel for Consumers' in his letter of March 19, 1980, accompanying the application, stated:

> "Consumers' and representatives of the City have reached agreement on the terms of the proposed franchise agreement but . . . there will be a delay in obtaining the appropriate Council resolution. Due to this and the fact that the prior franchise agreement has expired, we have decided that it is necessary for Consumers' to bring this application and obtain the necessary interim Order."

By Order E.B.A. 374-1 dated May 2, 1980, the Board extended the existing franchise agreement upon the same terms and conditions as contained in that agreement until an order under section 10(2) of the Act is made in this application.

As it turned out, an agreement had not been reached between Consumers' and St. Catharines and, subsequent to the Board's Order, both parties have attempted to negotiate a new franchise agreement. The negotiations have not resulted in an agreement which is mutually satisfactory.

Consumers' offered the municipality its more-or-less "standard" form of franchise agreement. St. Catharines countered with several amendments, three of which have been agreed to by Consumers'. There are now two remaining issues upon which agreement has not been

reached, namely; the terms relating to the liability or indemnity clause and to the relocation clause. The indemnity clause proposed by the municipality is the same as that contained in the presently existing franchise agreement. The relocation clause proposed by the municipality is substantially the clause approved by the Board in a Consumers' franchise agreement with the City of Niagara Falls but it is not in the presently existing franchise agreement with St. Catharines.

The Hearing

At the hearing, L. W. Youell, General Manager of Consumers' Provincial Region, gave evidence on a number of issues including:

- the terms and status of Consumers' franchise agreements in the region with particular reference to the Township of Louth and the Town of Thorold;
- the number of customers served by Consumers' in the municipality (some 39,000);
- the basis and the amount of municipal taxes paid to St. Catharines;
- the nature of the negotiations which took place between Consumers' and the municipality;
- the application by Consumers' of the Public Service Works on Highways Act (the "PSWH Act") under differing conditions;

- the reasons for Consumers' opposition to St. Catharines' proposed amendments;
- the reason for the relocation clause proposed by St. Catharines being included in the Niagara Falls agreement; and
- the working relationships with municipal officials.

Mr. Richardson, during his cross-examination of Mr. Youell, introduced a schedule entitled "Costs Associated with Construction and Maintenance". Mr. Youell was examined on this schedule with respect to a comparison of costs for land acquisition, construction, administration, municipal taxes, liability insurance and relocation when pipelines are placed on either private or public property.

Henry Mar, the Municipal Projects Engineer for the municipality, gave evidence on behalf of St. Catharines primarily with respect to the sharing of relocation costs under the PSWH Act.

Indemnity

The indemnity clause sought by St. Catharines is substantially the same as the clause proposed by the City of Niagara Falls and denied by the Board in its Reasons for Decision E.B.A. 311.

Mr. Richardson pointed out that the indemnity clause prepared by St. Catharines is the same clause that is in the presently existing franchise agreement which was

extended by Board Order in May 1980. In his view, as between Consumers' and St. Catharines only,

> ". . . the clause indicates that should a law-suit arise in which both the gas company and the city are named as defendants, in which it is claimed that injury has occurred because of the operation of the gas line, the gas company will indemnify the City of St. Catharines against any such claims, and such claims made by a third party, but it does not create an additional liability on the part of the gas company as against any third party".

To clarify any misunderstanding, Mr. Richardson said that St. Catharines was prepared to amend its proposed indemnity clause by "excepting" from the clause "any negligence on the part of the City of St. Catharines." He stated that the municipality's sole concern was that "the gas company protect the city from any claims made by third parties resulting from injury caused by the operation of the gas line."

The Board dealt at some length with this indemnity clause in its Reasons for Decision E.B.A. 311 with reference to the Niagara Falls franchise agreement. In that decision, the Board expressed the view that the indemnity clause submitted by the City of Niagara Falls, and now submitted by St. Catharines:

> ". . . is intended to cover indemnity for more than just damage or injury resulting from the negligence of Consumers', its employees or agents and that there is a real risk that it would be interpreted to impose a liability without fault on Consumers'".

The Board also expressed the opinion that:

> ". . . there is merit in standardizing the terms and conditions of gas franchise agreements in general, and the indemnity provisions of such agreements in particular, in order to

> ensure uniformity in the treatment accorded to the various municipalities served by Consumers' so as to eliminate the cross-subsidization among customers that would result from averaging of costs if the treatment of the municipalities was not uniform."

The Board is not bound by precedent; nevertheless, it can find nothing in the evidence or arguments presented in this hearing which would warrant a decision contrary to that reached in an earlier hearing with reference to the same clause. The Board finds that the indemnity clause proposed by Consumers' is appropriate in this case and will approve it as a term of the franchise agreement.

Relocation Costs

The issue of relocation costs arises out of the following circumstances. When a municipality undertakes highway improvements, under the provisions of the PSWH Act, the utility bears 50 percent of the labour costs involved in relocating its pipelines, and all material costs. The municipality pays 50 percent of the labour costs. When the relocation is required for purposes other than highway improvements such as water works or sanitary sewers, the municipality pays the total cost of labour and materials involved in the relocation. St. Catharines proposed that its liability under the relocation clause be limited to 50 percent payment of labour costs in all circumstances where Consumers' is obliged to move its pipelines because of municipal undertakings in addition to highway improvements.

From Exhibit 19, the Board concludes that Consumers' is prepared to pay all but 50 percent of labour costs when trunk sewers are placed and the road is repaired, if construction drawings for the highway project are available. The municipality explained why such plans are not always available when trunk sewers are being placed. Mr. Youell also agreed that any cost of relocation of plant situated on private property would be totally borne by Consumers' but he added that he expected that the likelihood of relocation in such circumstances was remote.

Mr. Atkinson pointed out that with the exception of the Niagara Falls franchise agreement, Consumers' complies with the PSWH Act only. He argued the importance of standardization of agreements and said that it would be inequitable to grant St. Catharines a preferred position over that of some 150 other municipalities. He said that the agreement with Niagara Falls included the additional reimbursement because of an oversight on Consumers' part. He submitted that the "error that occurred in that case [Niagara Falls] should not be compounded in this case."

Mr. Richardson reiterated his basic position that the interest of Consumers' or of Consumers' customers did not equate to the public interest, and it was his general position that the public should therefore not be obliged to pick up Consumers' costs.

He said that by granting Consumers' the right to use the public highways, the municipality saved Consumers' the cost of acquiring the easements it would otherwise require. Mr. Richardson submitted that once the right to use the public highways is granted, the municipality is then restricted in its own use of the highways for municipal purposes, and in certain circumstances the municipality is subjected to additional costs.

He said that the municipal taxes paid by Consumers' did not constitute compensation for the use of the public highways because the same amount would be paid whether the pipelines were laid on public or private property.

Mr. Graholm informed the Board that under most of its franchise agreements, Union Gas Limited pays all the costs of relocating its pipelines whether the relocation is necessitated by highway improvement or otherwise. The Board was given to understand that Northern and Central Gas Corporation Limited generally pays 50 percent of the labour costs of relocating its pipelines regardless of cause although no clause requiring such additional payment is incorporated in its franchise agreements. He suggested that there were several matters to be considered before deciding this issue and he said that the Board "should be cautious in awarding costs to be paid by a gas distributor to a municipality."

The Board has reviewed its decision in the Peterborough case, E.B.A. 316, with particular regard to

the relocation clause. In that application, the City of Peterborough requested the following clause:

> "If in the course of the municipality constructing, reconstructing, changing, altering or improving any highway, whether during the term of this franchise agreement or otherwise, it becomes necessary to take up, remove or relocate any works placed in or on the highway by the Company, the Company shall take up, remove or relocate such works at its expense."

The Board rejected the clause. It was of the opinion that:

> ". . . the proposed clause would result in sufficient deviation from the practice in other municipalities served by the Company that its inclusion would constitute unnecessary discrimination."

A review of other Board decisions shows that the Board has approved variations in the "relocation" clause for all three major gas utilities although it has attempted to standardize the clause for each utility.

In spite of Mr. Richardson's persuasive argument, the Board finds that acceptance of the relocation clause proposed by St. Catharines would amount to a deviation from the practice presently followed by Consumers' in St. Catharines and in most other municipalities served by it. The Board therefore approves the clause as submitted by Consumers' for inclusion in the St. Catharines franchise agreement.

The Board also approves the amendments to the franchise agreement as shown in Exhibit 7 and agreed to by Consumers' and the municipality.

Disposition

The Board finds that in the absence of any suggestion by either the municipality or Consumers' that public convenience and necessity does not require that natural gas be distributed in the municipality or that there is another distributor who could or would provide better service than Consumers', an extension of the franchise agreement should be granted.

Under Section 10(2) of the Act, the Board has jurisdiction, if public convenience and necessity appear to require it, to make an order renewing or extending the term of right of a franchise for such period of time and upon such terms and conditions as may be prescribed by the Board. The Board is of the opinion that public convenience and necessity require it to make such an order.

The Board concludes that the term of right of the franchise shall be renewed for a period of twenty years upon the terms and conditions prescribed in the form of franchise agreement attached hereto as Appendix 'A'.

The franchise agreement shall apply to the municipality excluding that part of the Township of Louth which was annexed to St. Catharines by the Regional Municipality of Niagara Act. The franchise agreement approved by the Board for the Township of Louth shall continue to apply to the annexed portion until its expiry date in 1985. Thereafter the terms and conditions of Appendix 'A' shall apply to the entire municipality.

The costs of the Board shall be paid by Consumers'.

An order will issue in accordance with these Reasons for Decision.

DATED at Toronto this 22nd day of December, 1981.

ONTARIO ENERGY BOARD

S. J. Wychowanec
Vice Chairman and
Presiding Member

R. H. Clendining
Chairman

Appendix A

THIS AGREEMENT made the day of , 19

BETWEEN:

THE CONSUMERS' GAS COMPANY LTD.

hereinafter called the "Company"

OF THE FIRST PART

— and —

THE CORPORATION OF THE CITY

OF ST. CATHARINES

hereinafter called the "Municipality"

OF THE SECOND PART

WHEREAS the Company desires to distribute and sell gas (which term shall mean and include natural gas, manufactured gas, synthetic gas, or liquefied petroleum gas, and includes any mixture of natural gas, manufactured gas, synthetic gas, or liquefied petroleum gas, but does not include a liquefied petroleum gas that is distributed by means other than a pipe line) in the Municipality upon the terms and conditions hereinafter set forth.

AND WHEREAS by By-law passed by the Council of the Municipality, the Mayor and Clerk of the Municipality have been authorized and directed to execute, seal and deliver this Agreement on behalf of the Municipality.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for valuable consideration, (the receipt and sufficiency of which is hereby acknowledged):

1. The consent, permission and authority of the Municipality are hereby given and granted to the Company, to supply gas to the Municipality and to the inhabitants thereof and to enter upon all highways now or at any time hereafter within the jurisdiction of the Municipality and to lay, maintain, operate and repair such mains and pipes as the Company may require therein and thereon for the transmission and supply of gas in and through the Municipality together with the right to construct, maintain and repair all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transmission and supply of gas in the Municipality.

2. The Company shall well and sufficiently restore forthwith to as good condition as they were in before the commencement of the Company's operation to the satisfaction of the Municipal Engineer (which term means from time to time such employee of the Municipality as the Municipality shall have designated as such for the purposes of this Agreement, or failing such designation, the senior employee of the Municipality for the time being charged with the administration of public works and highways in the Municipality) all highways, squares and public places which it may excavate or interfere with in the course of laying, constructing, or repairing or removing of its mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances and shall make good any settling or subsidence thereafter caused by such excavation, and further, in the event of the Company failing at any time to do any work required by this Section the Municipality may forthwith have such work done and charged to and collect from the Company the cost thereof and the Company shall on demand pay any reasonable account therefor certified by the Municipal Engineer.

3. The Company shall at all times wholly indemnify the Municipality from and against all loss, damage and injury and expense to which the Municipality may be put by reason of any damage or injury to persons or property resulting from the imprudence, neglect or want of skill of the employees or agents of the Company in connection with the construction, repair, maintenance or operation by the Company of any of its works in the Municipality.

4. Except in the event of emergency no excavation, opening or work which shall disturb or interfere with the surface of any highway shall be made or done unless a permit therefor has first been obtained from the said Municipal Engineer and all such works shall be done under his supervision and to his satisfaction.

5. The location of all pipes and works on said highways shall be subject to the direction and approval of the Municipal Engineer and all such pipes and works, whenever it may be reasonable and practical, shall be laid in and along the sides of said highways.

6. The Company before beginning any new work in the said Municipality under this Agreement, save and except lateral service pipes, shall file with the Municipal Engineer a plan drawn to scale showing the highways in which it proposes to lay mains, and pipes, and the particular parts thereof it proposes to occupy for any of such purposes together with definite written specifications of the mains, pipes and works proposed to be laid or constructed by it, specifying the materials and dimensions thereof, and the depth at which the same are to be laid, and similar plans and specifications shall be filed with the said Municipality of all extensions of, or additions to such mains, pipes, or works before any such extensions or addition shall be begun. Provided further that the Company shall provide the Municipal Engineer with a revised plan of the location of any main should there be any alteration in the plan originally filed with the Municipal Engineer and shall notify and obtain the approval of the Municipal Engineer before undertaking any work involving the change in location of any main.

7. The Company undertakes at its own cost to ascertain that its works will not avoidably disturb survey marks, bars and monuments situated on the boundaries of City Highways or Control Survey Stations and Benchmarks within them and for the latter two categories, the City will provide available information as to their location within any reasonably-sized areas at the request of the Company. In the event that such disturbance is in the opinion of the City Engineer unavoidable, the Company agrees to bear the cost of referencing and restoring the said marks, bars and monuments subject to the requirement of the Surveys Act, and the Control Survey Stations and Benchmarks to the satisfaction of the City Engineer; and in each such disturbance the Company agrees to save the City harmless from all claims of others whose boundaries may thereby be affected in any way.

8. The Company shall use at all times proper and practicable means to prevent the escape or leakage of gas from its mains and pipes and the causing of any damage or injury therefrom to any person or property.

9. The rates to be charged and collected and the terms of service to be provided by the Company for gas supplied by it under this franchise shall be the rates and the terms of service approved or fixed by the Ontario Energy Board or by any other person or body having jurisdiction to approve or fix such rates or terms of service. Any application to approve or fix rates to be charged and collected or terms of service to be provided by the Company for gas supplied by it shall be made in accordance with The Ontario Energy Board Act, R.S.O.1970, Chapter 312, as amended from time to time or any other statute regulating such application.

10. The Municipality will not knowingly build or permit any Commission or other public utility or person to build any structure or structures encasing any mains or pipes of the Company without the prior written approval of the Company.

11. (a) This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and to all orders and regulations made thereunder and from time to time remaining in effect; and in event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything herein contained or as to the performance or non-performance by either of such parties of any of the provisions hereof or as to the respective rights and obligations of the parties hereto hereunder, either of such parties may refer such dispute or disagreement to arbitration under the provisions of Paragraph 11 (b) hereof.

(b) Whenever The Municipal Arbitrations Act, R.S.O. 1970, Chapter 286 shall extend and apply to the Municipality any references to arbitration pursuant to the provisions of Paragraph 11 (a) hereof shall be to the Official Arbitrator appointed under the Act and shall be governed by the provisions of that Act. At any other time the procedure upon an arbitration pursuant to the provisions of the said Paragraph 11 (a) shall be as follows:

> Within twenty days after the written request of either of the parties hereto for arbitration each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiring of such twenty day period select a third. In case either of the parties hereto shall fail to name an arbitrator within twenty days after the said written request for arbitration,the

arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Supreme Court of Ontario for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by The Arbitration Act, R.S.O. 1970, Chapter 25 as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

12. In the event of the Company being prevented from carrying out its obligations under this Agreement by reason of any cause beyond its control, the Company shall be relieved from such obligations while such disability continues and in the event of dispute as to the existence of such disability such dispute shall be determined as hereinbefore provided. Provided, however, that the provisions of this Paragraph 12 shall not relieve the Company from any of its obligations as set out in Paragraph 3 hereof.

13. The franchise hereby granted shall be for a term of twenty (20) years from and after , provided that if at any time prior to the expiration of the said term of twenty (20) years or prior to the expiration of any renewal thereof, the Company shall notify the Municipality in writing that it desires a renewal thereof for a further period, the Municipality may but shall not be obliged to renew by By-law this Agreement from time to time for further periods not exceeding twenty (20) years at any time.

14. The Company shall pay the cost, charges and expenses of the Municipality and of its Solicitor of and incidental to, the preparation and passing of such By-law and this Agreement.

15. For the purpose of this Agreement and of any matters arising out of same the Municipality shall act by the Council thereof.

16. Wherever the word "highway" is used in this Agreement or in the said By-law it shall mean common and public highways and shall include any bridge forming part of a highway on or over and across which a highway passes and any public square, or road allowance and shall include not only the travelled portion of such highway but also ditches, driveways, sidewalks and sodded areas forming part of the road allowance.

17. Upon the expiration of this franchise or any renewal thereof the Company shall have the right, but nothing herein contained shall require it, to remove its mains, pipes, plant and works laid in the said highway. Provided that forthwith upon the expiration of this franchise or any renewal thereof the Company shall deactivate such pipeline in the Municipality. Provided further that if the Company should leave its mains, pipes, plants and works in the highway as aforesaid and the Municipality at any time after a lapse of one year from termination require the removal of all or any of the Company's said facilities for the purpose of altering or improving the highway or in order to facilitate the construction of utility or other works in the highway the Municipality may remove and dispose of so much of the Company's said facilities as the Municipality may require for such purposes and neither party shall have recourse against the other for any loss, cost or expense occasioned thereby.

18. Any notice to be given under any of the provisions hereof may be effectually given to the Municipality by delivering the same to the Municipal Clerk or by sending the same to him by registered mail, postage prepaid, addressed to the "Clerk of the Corporation of the City of St. Catharines, City Hall, St. Catharines Ontario," and to the Company by delivering the same to its Manager or other Chief Officer in charge of its place of business in the City of St. Catharines , or by sending the same by registered mail, postage prepaid, addressed to "The Consumers' Gas Company, Suite 4200, 1 First Canadian Place, Post Office Box 90, Toronto, Ontario, M5X 1C5." If any notice is sent by mail the same shall be deemed to have been given on the day succeeding the posting thereof.

19. This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

20. Until February 7, 1985, these terms and conditions shall apply to the geographic area of the Municipality excluding that part of the Township of Louth annexed to St. Catharines by the Regional Municipality of Niagara Act. For the balance of the term of this franchise, these terms and conditions shall apply to the entire geographic area of the Municipality.

IN WITNESS WHEREOF the said Company has hereunto caused its Corporate Seal to be affixed and these presents signed by its proper officers in that behalf and the said Corporation has hereunto caused its Corporate Seal to be affixed and these presents signed by the Mayor and Clerk.

THE CONSUMERS' GAS COMPANY LTD.

_____

_____

THE CORPORATION OF THE CITY OF ST. CATHARINES

_____
Mayor

_____
Clerk

Alberta Energy and Utilities Board

DECISION 2001-52

ALBERTA URBAN MUNICIPALITIES ASSOCIATION

STANDARD ELECTRIC FRANCHISE AGREEMENT WITH ATCO ELECTRIC LTD. AND UTILICORP NETWORKS CANADA

ALBERTA URBAN MUNICIPALITIES ASSOCIATION

STANDARD ELECTRIC FRANCHISE AGREEMENT WITH ATCO ELECTRIC LTD. AND UTILICORP NETWORKS CANADA

CONTENTS

1 INTRODUCTION 1

2 BACKGROUND 1

3 GENERAL OVERVIEW 2

4 CLAUSE 3(d) OF THE STANDARD AGREEMENT– RENEWAL 3

5 CLAUSES 5 AND 8 OF THE STANDARD AGREEMENT – FRANCHISE FEE AND MUNICIPAL TAXES 4
5.1 Can Both a Franchise Fee and Linear Taxes be Charged? 4
5.2 Can a Municipality Change the Franchise Fee Without Board Approval? 6
5.3 Collection of Linear Taxes 10

6 CLAUSE 12 OF THE STANDARD AGREEMENT – INCREASE IN MUNICIPAL BOUNDARIES 11

7 CLAUSE 15 OF THE STANDARD AGREEMENT – RESPONSIBILITY FOR RELOCATION COSTS 13

8 OTHER ISSUES 15
8.1 Rights of Aboriginal Communities 15
8.2 Clause 5 of the Standard Agreement – Calculation of Franchise Fee 16
8.3 Modifications to the Standard Agreements 16

9 CONCLUSION 17

APPENDIX 1 THOSE WHO PARTICIPATED IN THE PROCEEDING 19
APPENDIX 2 RELEVANT LEGISLATION 21

SCHEDULE "A" ELECTRIC DISTRIBUTION SYSTEM FRANCHISE AGREEMENT ..... 32 pages

ALBERTA ENERGY AND UTILITIES BOARD
Calgary, Alberta

ALBERTA URBAN MUNICIPALITIES ASSOCIATION
STANDARD ELECTRIC FRANCHISE AGREEMENT **Decision 2001-52**
WITH ATCO ELECTRIC LTD. AND UTILICORP **Application No. 2000361**
NETWORKS CANADA **File No. 6650-1-1**

1 INTRODUCTION

By letter dated November 27, 2000, the Alberta Urban Municipalities Association (AUMA), ATCO Electric Ltd. (AE) and UtiliCorp Networks Canada (UNC) (the Applicants) applied to the Alberta Energy and Utilities Board (the Board) for approval of a standard electric distribution franchise agreement (the Standard Agreement) (the Application), a copy of which is attached as Schedule "A" to this Decision.

A Notice of Hearing was published in all major newspapers in Alberta on February 12, 2001. Notice was also directly served on interested parties. A hearing was convened on February 22, 2001, in the Prince of Wales Armouries located in Edmonton, before T. M. McGee, Gordon Miller and Jeff Gilmour sitting as the Board Panel. A list of those who appeared at the hearing is contained in Appendix 1 to this Decision.

At the request of the interested parties, the Board subsequently circulated a list of issues on which it sought written argument. Written argument was received by March 16, 2001 and written responses to argument were filed by March 30, 2001.

2 BACKGROUND

Section 45 of the *Municipal Government Act* (the MG Act) requires that municipalities receive Board approval prior to entering into, renewing or amending an individual electric franchise agreement with a person to provide a utility service in the municipality. In granting approval, the Board must determine whether the proposed agreement is necessary and proper for the public convenience, and properly serves the public interest, as set out in section 61 of the *Electric Utilities Act* (the EU Act). (See Appendix 2 for a complete listing of the statutory references contained in this Decision).

In the past utilities have typically developed their own "standard" agreements, which have been used in their negotiations with municipalities. Amendments to the utility's standard agreement were made when necessary to accommodate a specific municipality's circumstances and requirements. The use of such an agreement helped ensure some uniformity in treatment between the municipalities and customers throughout the utility's service area.

The Standard Agreement negotiated between AUMA, AE and UNC is intended to be available to municipalities as a new template electric franchise agreement to replace the standard agreements currently used by the utilities. The Applicants contend that the use of a more standardized agreement throughout the province would provide the benefit of a common treatment of municipalities and the customers of utilities located within municipalities throughout the province regardless of the service provider. The use of a standard agreement is also intended to help clarify the rights and responsibilities of both utilities and municipalities with respect to the provision of utility services in municipalities.

The Standard Agreement differs significantly from agreements currently in place, in particular with respect to its treatment of franchise fees, linear taxes and relocation costs. The different treatment of these issues could result in higher costs to the utilities in providing service within municipalities. AUMA therefore requested that the Board review and approve the Standard Agreement, prior to the agreement being offered to municipalities for negotiation.

As the Standard Agreement includes provisions that have never been approved by the Board in any previous franchise agreements, the Board has reviewed the Standard Agreement and provides in this document its views regarding issues that it considers should be reviewed by all parties. All individual agreements negotiated between municipalities and utilities will continue to be subject to approval by the Board pursuant to section 45 of the MG Act and section 61 of the EU Act, whether or not the individual agreements are based on the Standard Agreement template.

Generally, at the time a municipality makes application to the Board for approval of a franchise agreement, the Board also receives an application from the utility for a change in rates, if necessary, due to terms contained in the franchise agreement. In these circumstances, the Board will review both applications at the same time. The Board may consider the ultimate impact on rates caused by a clause or clauses contained in the franchise agreement as part of the review of the agreement itself.

The Application contains a supporting package, which includes recommendations for the manner in which certain costs associated with provision of service in municipalities should be recovered through the utility's rates. The Board will also provide its views respecting how these costs should be recovered.

3 GENERAL OVERVIEW

Overall, the Board supports the use of a standard franchise agreement. The Board considers that the use of a standard franchise agreement throughout the province could help clarify and standardize the rights and responsibilities of both utilities and municipalities with respect to the provision of utility services. Such an agreement would also make it easier for both utilities and municipalities to negotiate their franchise agreements at the time of renewals. A standard franchise agreement could be of particular assistance to smaller municipalities, which may not have the same level of resources available to review franchise agreements as larger

municipalities. However, the Board does not consider that utilities and municipalities are required to use the Standard Agreement when negotiating franchise agreements. Municipalities and utilities continue to have the option to modify the Standard Agreement if they wish to do so.

The Standard Agreement, which is the subject of this application, deals with issues that need to be addressed as the role of utilities changes with the restructuring of the electric industry. In particular, the Board considers the method proposed for calculation of the franchise fee, based on the distribution tariff of the utility, to be appropriate, as it will exclude any energy component from the calculation of the franchise fee. The Board considers that in a deregulated environment, the energy component may fluctuate and therefore the exclusion of the energy component will provide greater stability in revenues for the municipality and rates for the customers. The Board does have concerns, however, that the definition of the Distribution Tariff, as contained in the Standard Agreement, should be clarified so as to clearly exclude any possible riders to the Distribution Tariff relating to pool price deferral account amounts when calculating the franchise fee. This should avoid any possible misunderstandings between the municipality and the utility with respect to the calculation of this fee.

Other issues addressed in this agreement include the rights of electric retailers to operate within the municipality; the use of utility facilities located on municipal lands by third parties; and a municipality's right to purchase the distribution system within the municipality. These are recognized as emerging issues that are properly addressed within a standard franchise agreement.

The Board's concerns respecting the Standard Agreement are primarily related to clauses which could impede the Board's ability to set fair and reasonable rates to be paid by the customers for utility services. The balance of this Decision deals with issues of concern to the Board, and issues raised by interested parties.

4 CLAUSE 3(d) OF THE STANDARD AGREEMENT– RENEWAL

The Board asked the parties to comment on:

- whether or not clause 3(d) is in contravention of the provisions of section 47 of the MG Act.

Positions of the Parties

AUMA and AE argued that this clause is not in contravention of section 47 of the MG Act because the provisions for changes in franchise fee and relocation costs, which change after the Agreement expires, are expressly laid out in the original agreement. The purpose of this clause is to try to ensure that agreements are either terminated or renewed on a timely basis after agreements expire.

AE asserted that the changes in the relocation clause and the franchise fee are reasonable when there is no long term agreement in place, because at that point AE no longer has the stability of a

long term agreement on which to base decisions respecting investment in facilities. Since AE makes long term decisions respecting investment, it considers that clause 3(d) provides an appropriate incentive to municipalities to negotiate the renewal of a franchise agreement.

Consumers Coalition of Alberta (CCA) stated that the provisions of clause 3(d) are probably not in direct contravention of section 47 of the MG Act. However, CCA asserted that automatic renewals of the franchise agreement ought not to occur without a further review by the Board because of the impact on rates. In response to CCA's concern that clause 3 provides for automatic renewals, AUMA indicated that this is not an automatic renewal because municipalities have the option to agree or not to the renewal.

Views of the Board

The Board is concerned that this clause could impede the municipality's ability to negotiate a future franchise agreement that varies from the Standard Agreement.

The Board considers the purpose of section 47 is to provide uniformity in provision of service even when franchise agreements have expired and new agreements have not yet been negotiated and implemented. This in turn allows municipalities and utilities the ability to properly negotiate future franchise agreements without compromising the rights and responsibilities provided in a franchise agreement.

While the Board recognizes AE's concern that franchise negotiations be completed in a timely fashion so that the utility can make reasonable long-term decisions respecting the facilities in the municipality, the Board is concerned that such a clause could compromise the ability of a future municipal council to negotiate a new agreement that may vary from the Standard Agreement.

Although the Board expects that AUMA fully understands the implications of this clause, it is possible that some individual municipalities could enter into a franchise agreement based on the Standard Agreement without understanding the implications of this clause on the municipality. The Board may therefore require confirmation from a municipality seeking approval of a franchise agreement that it understands that this clause could result in reduced revenues for the municipality after the agreement expires and that the municipality is satisfied that this provision will not compromise its ability to negotiate future franchise agreements. The Board would also expect that the utilities should be providing municipalities with adequate notice of the level of franchise fee that would be applicable if the agreement is not renewed within one year of expiration.

5 CLAUSES 5 AND 8 OF THE STANDARD AGREEMENT – FRANCHISE FEE AND MUNICIPAL TAXES

5.1 Can Both a Franchise Fee and Linear Taxes be Charged?

The Board asked the parties to comment on the following issues:

- On what legal basis is it proposed to charge a franchise fee plus linear taxes under the standard agreement?
- Does section 45 of the MG Act provide a municipality with the right to collect a franchise fee from a utility when it grants a franchise for that utility?
- Does section 61 of the MG Act provide the municipality with authority to assess charges against a utility company?

Positions of the Parties

AUMA argued that under section 353 of the MG Act, municipalities have the specific power to impose a linear property tax. It further stated that linear taxes are not charged pursuant to the Standard Agreement. Clause 8 of the Standard Agreement merely specifies that the fees charged under the agreement are in addition to municipal taxes or other charges levied by the municipality. A separate by-law and corresponding tax levy will be required by the municipality to collect property taxes from each utility.

AUMA stated that municipalities have the right of a natural person to enter into contracts. It was AUMA's position that when municipalities enter into a contractual agreement pursuant to section 45 of the MG Act and grant a right to the utility to use their property, this would also provide them with the ability to charge the utility for the use of that property. AUMA contended that the franchise fee is not in place of or even related to the linear taxes. Rather, the franchise fee is consideration for the contractual arrangement made between the utility and the municipality and is similar in nature to the rent paid by other businesses for use of the municipality's lands. According to AUMA, section 61 also provides the municipality with the specific authority to charge for use of its property.

CCA argued that section 61 of the MG Act is not applicable with respect to utilities because it is a general provision of the MG Act and the ability to tax or charge a franchise fee is a specific provision of the MG Act as set out in section 360. Since section 61 is a general provision and section 360 is specific, section 360 takes precedence over section 61. Therefore it was CCA's contention that a municipality cannot collect both a franchise fee and a linear tax, since section 360 does not allow for this. CCA also argued that franchise fees are considerably different than rent paid by other businesses, as utility services are governed by unique rules and regulations.

Views of the Board

The Board agrees with AUMA that agreements made pursuant to the Standard Agreement will be in accordance with section 45 of the MG Act. The Board agrees that municipalities have the power to contract with utilities based on their "natural person" powers as defined in section 6 of the MG Act. The law is clear that a municipality has the power to do not only the things set out in its enabling statutes, but also those things that are fairly implied in the powers set out in the statutes.[1] In *QCTV Ltd. v. Edmonton*, [1983] 6 W.W.R. 602, the Alberta Court of Queen's Bench held that the power of a municipality to charge a special franchise charge was "fairly implied in and incidental to" the express power of the municipality to confer a special franchise under a

[1] See, for example, *Ottawa Elec. Light Co. v. Ottawa* (1906), 12 O.L.R. 290 at 299 (C.A.)

section similar to the current section 45 of the MG Act. Similarly, the Board is of the view that municipalities have an implied power to charge franchise fees pursuant to section 45. For these reasons, the Board is of the view that municipalities may charge franchise fees in addition to imposing linear property taxes as set out in clauses 5 and 8 of the Standard Agreement.

The Board is not convinced by the argument of CCA that agreements made pursuant to the Standard Agreement would be tax agreements by virtue of section 360 of the MG Act. The Board finds that franchise fees such as the fees proposed in the Standard Agreement are not taxes. A tax is a levy a person cannot avoid paying, whether or not that person intends to use a service being provided.[2] In *QCTV Ltd. v. Edmonton*, cited above, the court found that a special franchise charge was not a tax because it was "freely and voluntarily negotiated" between the municipality and the utility. Similarly, for individual franchise agreements entered into by parties under the current legislation, individual municipalities will negotiate the precise amount of a franchise fee with utilities. As a franchise fee is not a tax, it is not appropriate to characterize the Standard Agreement as a tax agreement pursuant to section 360 of the MG Act.

For all the foregoing reasons, the Board agrees that municipalities have the right to collect both a franchise fee and linear taxes. However, the Board does have some concerns that the imposition of both franchise fees and linear taxes could result in customers paying significantly higher amounts to the municipality. Accordingly, the Board will continue to review the amount of the franchise fees when it reviews individual franchise agreements pursuant to section 45. The Board will also consider linear property taxes charged to utilities when it reviews individual franchise agreements to ensure that the total amount of fees and charges to be recovered from customers is not unreasonable.

5.2 Can a Municipality Change the Franchise Fee Without Board Approval?

The Board asked the parties to comment on the following issues:

- *Would allowing a change in the franchise fee as provided in clause 5(b) of the Standard Agreement constitute an amendment to the franchise agreement, requiring both notice and Board approval pursuant to section 45 of the MG Act?*
- *Would allowing a change in the franchise fee without Board approval fetter the Board's discretion when approving the consequent change in the utility's rates, which is required pursuant to section 55 of the EU Act?*

Positions of the Parties

AUMA and UNC both asserted that a change in the franchise fee would not constitute an amendment to the Agreement, because the Agreement allows for the franchise fee to change over the course of the Agreement. According to UNCA, as long as a municipality provides written notice concerning a change to the franchise fee for the subsequent year by December 1st, there

[2] See, for example, *Halifax* v. *N.S. Car Works Ltd.*, [1914] A.C. 992, 18 D.L.R. 649); *Re Cariboo College and Kamloops, (1982)* 26B.C.L.R. 133, 133 D.L.R. (3d) 241 (S.C.).

will be no amendment to the original agreement. AUMA indicated that the Board's discretion in setting tariffs pursuant to the EU Act would not be fettered because it has already approved similar methodologies for the calculation of rates. For example, the Board approved Transmission Administrator tariffs and Distribution tariffs contain formulae which allow for monthly variations in rates. The Board has also approved franchise agreements where municipalities have been authorized to set their own franchise rate, within a specified rate cap.

In response to concerns raised about all issues in the Standard Agreement which deal with cost responsibility, including franchise fees, linear taxes and relocation costs, AUMA indicated that it did not intend to circumvent the Board's jurisdiction with respect to rate setting. AUMA clarified that it had no objection to dealing subsequently with cost allocation issues in the context of a general rate application.

UNC argued that these amendments to the franchise fee would not fetter the Board's discretion when setting rates pursuant to the EU Act because the use of its distribution tariff as a flow through for franchise fees does not constitute a utility rate. UNC asserted that it should be allowed to recover the franchise fee from customers and therefore if the Agreement is approved with a franchise fee that changes at the discretion of the municipality, the Board order approving the agreement should also allow the utility to recover the fee from customers.

AE stated that the Board should allow it to recover changes in the franchise fee as a reasonable cost of providing service. AE contended that the Board should approve franchise fees as an appropriate component of a utility's rates at the time it approves the franchise agreement. AE argued that if the Board approves the terms and conditions of the Standard Agreement, which allow for the franchise fee to be set at the municipality's discretion, it is inherently approving the recovery of any additional costs by AE. Therefore, a utility should automatically be allowed to recover these fees from customers, without any further Board approval, in the same manner that changes in linear taxes are allowed to be recovered from customers without any approval of the Board.

It was the position of CCA that franchise fees form part of the utility's rates and are therefore in part the responsibility of the regulator. In assessing whether or not to approve a franchise fee, it was CCA's view that the Board must take into account the prudency of the fee. Consequently, CCA asserted that any change in the franchise fee should require Board approval. CCA argued that the Board has the ultimate authority both with respect to the level of franchise fees and the manner of collection of these fees. CCA further pointed out that changes to the franchise fee without a required review by the Board would result in little or no public process respecting these changes.

Based on the foregoing, CCA argued that the Board should not allow for automatic adjustments to the utility's rates with respect to franchise fee adjustments.

The Senior Petroleum Producers Association (SPPA) and Industrial Power Consumers and Cogenerators Association of Alberta (IPCCAA) both stated that the Board can only address cost

recoveries and allocations in the course of a general rate application. Therefore any decisions respecting the recovery of any additional costs arising from the imposition of both franchise fees and linear taxes should only be addressed in a general rate application.

TransCanada Energy Ltd. (TransCanada) stated that the utilities should not be entitled to recover any additional costs resulting from entering into franchise agreements as proposed, unless they receive prior Board approval pursuant to section 55 of the EU Act. TransCanada asserted that the Board should not amend UNC or AE's tariffs to allow for an automatic flow through of any additional costs that could be incurred as a result of the terms of the Standard Agreement.

Views of the Board

The Board considers that the authority of a municipality to charge a franchise fee is implied by the power of municipalities to enter into agreements with utilities pursuant to section 45 of the MG Act. As the Board has the responsibility to review agreements pursuant to section 45, the intent of the legislation seems clear that any kind of compensation that a municipality is receiving from a utility for use of the municipal land pursuant to a section 45 agreement should be subject to the Board's review.

The requirement for a review of franchise agreements by the Board is also contained in section 61 of the EU Act. This section indicates that approval of a franchise agreement may be given if it is determined that the privilege or franchise is necessary and proper for the public convenience and properly serves the public interest. When considering this responsibility, it would seem that the Board should not approve agreements that could result in unreasonable costs being passed on through rates to the customers of the utility.

The Board considers that if it approves an agreement with a provision that municipalities can set the level of franchise fee at their discretion on an annual basis, the Board would no longer be in a position to review the level of the fee to determine whether it is reasonable. Such a review is necessary to allow the Board to fulfill its mandate of ensuring that customer rates are fair and reasonable.

The Board recognizes that the MG Act provides a municipality with broad authority to make many decisions in the best interest of its residents. The Board must, however, temper this deference to municipal decision-making with its obligation to ensure that the fees established by the municipality are in the public interest.

Accordingly, the Board has considered the criteria that should be used in reviewing franchise agreements pursuant to section 45 of the MG Act and section 61 of the EU Act. The Board reviews franchise agreements from a more general perspective than when it reviews a utility's costs and rates. The Board considers it must, however, review such agreements to ensure that the fees are not unreasonable. The Board therefore considers that the provisions in the Standard Agreement, which allows a municipality to change the level of the franchise fee without any further review by the Board, are unacceptable.

Currently franchise fees are recovered through a specific rider of the utility. The Application indicates that franchise fees would continue to be recovered in this way. Generally, a utility makes application for any change in its franchise fee rider at the same time that a municipality makes application for the change in its franchise agreement and/or franchise fee. Such applications have regularly been considered and approved outside the context of a general rate application. However, principles respecting how franchise fees should be recovered could be reviewed in general rate applications.

As indicated by AUMA, the Board has approved franchise fees where the municipalities can set their own level of franchise fee, as long as the fees do not exceed a specified rate cap. In these cases the Board has examined whether or not the maximum level of the franchise fee is reasonable. If the Board finds that the maximum level of franchise fee is not unreasonable, it can approve the agreement with the franchise fee provisions as provided. The Board considers that franchise fees should only be set at the municipality's discretion if a maximum level of franchise fee is provided in the franchise agreement, which would be reviewed by the Board.

The Board would be prepared to accept the terms of the Standard Agreement to allow a municipality to change the level of the franchise fee annually, as long as the Board's approval was acquired for the establishment of a specific cap in the level of the franchise fee to be collected by the municipality. The cap provided in franchise agreements could vary from one municipality to another as a reflection of the varying circumstances of different municipalities. The Board notes that the utility would still need to revise its tariffs to allow for the recovery of the franchise fee to be paid to the municipality.

AE and UNC have indicated that these changes in the franchise fee rider should not require approval of the Board, once the franchise agreement has been approved. The Board disagrees with this position, given its jurisdiction and responsibility to ensure that rates are just and reasonable and not unjustly discriminatory. However, the Board may be willing to consider adoption of a filing for acknowledgement process with respect to changes in the utility's franchise rate rider, as long as the revised fee is within the Board approved cap, and is being applied equally to all customers. This would allow the municipality greater flexibility in changing franchise fee levels to meet municipal needs, yet would ensure that customer rates continue to be just and reasonable.

Should a municipality wish to exceed the level of the cap approved by the Board, or to assess different levels of franchise fees to different customers or customer classes, an application to the Board would be required. The Board would then issue a Notice to interested parties, and would base its final decision on the evidence presented.

5.3 Collection of Linear Taxes

The Board asked the parties to comment on the following issues:

- Could the collection of linear taxes through general rates lead to customers in municipalities with high mill rates being subsidized by customers in municipalities with lower linear taxes?
- Rather than collecting linear taxes through general rates, would it be fairer to collect linear taxes via a municipality specific rider, which reflects the actual amount of linear taxes paid in that municipality?

Positions of the Parties

AUMA supported the collection of linear taxes through general revenues, noting that linear taxes can be charged by every community and that the difference in the taxes between communities would not have a significant impact on utility rates. AUMA pointed out that there are greater inequities between communities experiencing higher and lower growth with respect to the utility expenditures for facilities for new customers.

UNC noted that it currently recovers linear taxes through its revenue requirement and the Standard Agreement merely continues a previously approved practice. UNC conceded that it would be fair to collect linear taxes through either a municipality specific rider or through the revenue requirement, as long as the taxes are collected in the same way for all customers of the utility. UNC pointed out that the collection of linear taxes through a municipality specific rider could result in fluctuations in the amounts collected and supported the collection of linear taxes through the revenue requirement, as this provides the additional benefit of rate stability. While this option could lead to cross-subsidization between communities with high and low mill rates, UNC indicated that the level of linear taxes overall make up such a small portion of the revenue requirement that the effect would be minimal.

SPPA, IPCCAA and TransCanada voiced concern with the apparent intent of the agreement that linear taxes should be collected from all customers of the utility, arguing that the Board has no jurisdiction to approve such matters without an application from a utility specifically dealing with the method of collecting such costs. These parties considered that these changes should therefore be considered at a general rate application.

CCA indicated that it considers that franchise fees and/or linear taxes should be collected as a municipality specific rider as opposed to a collection through the general rates. CCA was of the view that this visibility on bills was necessary to provide an appropriate price signal to the residents of the municipality.

Views of the Board

The Board is concerned that there could be a cross-subsidization in the utility rates between municipalities if linear taxes are collected through the general rates as has been suggested in the current Application.

UNC has indicated that recovery of these fees through revenue requirement provides additional stability. Unless a municipality's mill rate changes substantially from year to year, it is unlikely that the collection of linear taxes on a community specific basis would cause a significant impact on rates for customers in that community.

The Board considers that linear taxes for facilities being used exclusively within one community should be recovered from customers within the community in the same manner that franchise fees are recovered from customers.

The Board considers that AE's Rider "A-1" for municipal assessment ensures that there is no cross-subsidization between communities in respect to linear taxes for distribution facilities. A further benefit of AE's Rider "A-1" method of collection of linear taxes is the customer's ability to identify the portion of their billing resulting from municipal costs. The Board therefore considers that the preferable method of collecting linear taxes would be through a rider such as AE's Rider "A-1".

The Board notes the concerns voiced by several of the intervener groups that no changes to the method of recovery of linear taxes should be considered outside the course of a general rate application. The Board suggests that a change in methodology for municipalities served by UNC, whereby linear taxes would be collected through a municipality specific rider, could be considered outside the context of a general rate application, as this change should not raise concerns about cost allocation and cross-subsidization. It is noted that UNC would need to apply to the Board for a rider for recovery of franchise fees at the time a municipality has applied to the Board for approval of a franchise agreement that includes franchise fees. At that time the Board could also consider whether linear taxes should be collected in the same manner.

6 CLAUSE 12 OF THE STANDARD AGREEMENT – INCREASE IN MUNICIPAL BOUNDARIES

The Board asked the parties to comment on the following issues:

- On what legal basis can a municipality charge a different franchise fee in an annexed or expanded area of the municipality?
- How can clause 12 of the standard electric franchise agreement be reconciled with sections 51(1)(c) and 58(3) of the EU Act?

Positions of the Parties

AUMA argued that municipalities can charge fees for use of municipal property, and that the fees may vary for different portions of the municipality. In support of this position, AUMA noted that the cost of municipal services may vary for annexed areas. It noted that circumstances may vary between the two areas with respect to such issues as differing land use, administrative costs, competitive factors and conflict with municipal infrastructure. While AUMA allowed that

differing levels of franchise fees being collected by the utilities as a result of this situation might be discriminatory, it argued that this would not necessarily be unjustly discriminatory. Furthermore, AUMA noted that municipalities can charge different mill rates for annexed areas.

AUMA also pointed out that AE's rates for franchise fees vary significantly between communities, but have not been found by the Board to be unjustly discriminatory. Similarly, franchises fees which vary between customer classes have been approved by the Board, without having been considered unjustly discriminatory.

CCA argued that allowing differing franchise fees within a municipality would be unduly preferential, arbitrary or unjustly discriminatory and should not be allowed under the Standard Agreement. CCA further indicated that franchise fees should be subject to normal utility rate making principles when they are reviewed by the Board for recovery from customers through utility rates.

Views of the Board

The Board is concerned that the wording of this clause could interfere with the Board's responsibility to ensure that rates are fair and reasonable and not unduly discriminatory.

The Board notes that the proposed clause 12 allows the municipality the right to require the utility to charge customers within the increased area a different franchise fee percentage. This clause must be considered in light of the Board's power to set tariffs.

The Board considers it has a responsibility to ensure that the rates of investor owned utilities are not unjustly discriminatory pursuant to sections 51 and 58 of the EU Act. Furthermore, the Board has the jurisdiction to change, waive or disallow a service charge of a municipally owned utility if the Board considers the charge to be discriminatory pursuant to section 43 of the MG Act. The Board has a similar jurisdiction in respect of rural gas utilities pursuant to section 33 (2) of the *Gas Distribution Act*. Given this broad responsibility, the Board would have concerns about approving an agreement that could potentially result in the imposition of unjustly discriminatory rates to consumers.

AUMA indicated that a differing franchise fee rate might be appropriate due to a greater demand on municipal services in the annexed areas. The Board is not convinced that the demand on municipal services should impact the fee that a municipality charges the utility for use of the right of ways. However, if a municipality were able to demonstrate that the circumstances warranted a different level of franchise fee in the annexed area, the Board might be persuaded to approve a different level of franchise fee for that area.

As noted earlier, the Board considers that any instance in which the municipality intends to levy different levels of franchise fees to be recovered from customers within the municipality would require an application to the Board. The Board would have to be convinced that the different levels of franchise fee were appropriate in the circumstances in order to grant approval.

7 CLAUSE 15 OF THE STANDARD AGREEMENT – RESPONSIBILITY FOR RELOCATION COSTS

The Board asked the parties to comment on the following issues:

- On what basis is it reasonable for utilities to be responsible for relocation costs caused by municipal purposes?
- Could this result in customers in communities experiencing low growth subsidizing customers in high growth communities?
- To avoid this, should such costs be recovered on a municipality specific basis such as franchise fees are collected?

Positions of the Parties

AUMA argued that it was reasonable that utilities would pay for the cost of relocations requested by municipalities because these costs would not be incurred if the utilities' facilities were not located in public rights of way. AUMA further argued that since the location of the facilities will undoubtedly result in relocation costs at some future time, utilities should be prepared to pay for such relocation costs, regardless of the cause of the relocation costs. It was stated that the location of these facilities also causes additional administrative costs for the municipality.

AUMA suggested that these costs should be treated in the same manner as utility costs caused by system growth, which are borne by all customers. It was asserted that irrespective of growth, it is beneficial to all municipalities that these costs be shared, since relocation costs can be incurred due to other factors than growth. In low growth communities these types of costs cause a substantial financial burden. AUMA stated that recovering these costs on a municipality specific basis could impede decisions respecting granting of rights-of-ways, might negatively impact needed construction in low growth areas and would generally impede utility and other development because a municipality would be less flexible with respect to relocations.

Both AE and UNC asserted that the new provision for payment of relocation costs is consistent with the manner in which rural relocation costs are handled. While UNC noted that recovery of these costs through revenue requirement could result in some cross-subsidization between customers of different communities, the stability in costs to customers would make this a preferable option for municipalities. UNC stated that the inclusion of these costs in revenue requirement is consistent with the treatment of linear taxes and other costs of service. AE stated that if the Board approves an agreement in which AE is responsible for relocation costs, by implication, the Board would also be approving the recovery of those costs through AE's revenue requirement as a proper and reasonable expenditure.

SPPA, IPCCAA, TransCanada and CCA considered that the Board should not approve any costs or consider any issues respecting recovery of such costs outside of a general rate application. This was viewed as being necessary to allow all interested parties the opportunity to adduce evidence and present argument on these important issues.

CCA also considered that any relocation costs should remain within the jurisdiction in which they are incurred. With respect to AUMA's contention that the Board's position has always been that system growth should be borne by all customers, CCA responded that this is inaccurate when considering the requirement for construction contributions**.**

Views of the Board

The Board has concerns that this clause could result in subsidization of high growth urban communities by all customers of the utility. Indeed, the Board notes AE's comments in the proceedings that this could result in subsidization from one group to another.[3]

The Board recognizes that this clause would ensure that both urban and rural municipalities are treated in the same manner with respect to the cost of relocations of facilities located on municipal lands, which are required for municipal purposes. However, municipalities would continue to be responsible for the cost of relocation of utility facilities located on private lands in cases where the municipality has requested the relocation. The Board expects that the portion of facilities that could be impacted by this policy could be considerably different between urban and rural municipalities given the difference in the distribution systems between urban and rural areas. For example, the utilities' rural distribution systems are a combination of lines that have been installed by the utility and by Rural Electrification Associations (REAs), when purchased. Any facilities currently owned by a utility, which were originally installed by an REA, were located pursuant to the REA's policies, which could be significantly different from the utility's policies. It seems reasonable to expect that there could be basic differences in the facility locations between urban and rural municipalities, which could result in cross subsidizations if relocation costs are recovered through the revenue requirement.

The Board considers there could be potential for cross subsidization between both urban and rural customers as well as between areas of high growth and areas of low growth if relocation costs are included in the revenue requirement.

The Board believes the requirement in the Standard Agreement for a joint planning process is an appropriate measure to try to minimize line relocations that could have been avoided through better planning. The Board is still concerned that there could be less incentive for a municipality to minimize these costs if the utility is required to bear these costs and if the costs are then recovered through the revenue requirement, since relocation decisions would not have a direct monetary impact on the municipality. The Board considers that these types of costs might be further minimized if they are collected by the utility on a municipality specific basis.

The Board notes AUMA's position that these costs should be treated in the same manner as system growth costs. The Board's policy respecting system additions is that a contribution should be levied if the addition has occurred to meet the requirements of a limited number of customers. In Decision E93035 dated May 25, 1993, the Board addressed the principle of

[3] Tr. p.150

whether or not a system addition should qualify as an early system addition to be paid for by all customers. At page 132 the Board advised:

> The Board considers that for an addition to qualify as a system addition, its timing should satisfy the economic threshold and other planning criteria, used by APL for planning system additions in the first place, updated to reflect current and forecast conditions. If a prior (early system) addition occurs to meet the requirements of a limited number of customers, a contribution should be levied.

In summary, the Board's policy respecting system additions has been that a contribution should be levied if the addition has occurred to meet the requirements of a limited number of customers. The relocation costs being considered in this application are similar to system addition costs and would seem to be costs incurred to accommodate the residents of the municipality in which they are incurred.

Before the Board can thoroughly evaluate whether or not these types of costs should be recovered by the utility through a municipality specific rider or through revenue requirement, it would be helpful to have some kind of evidence respecting the level of these costs on a municipality specific basis so that the Board can consider the extent of any possible cross-subsidization.

The Board will therefore only consider whether these costs should be incorporated into the utility's revenue requirement at the time of the utility's next general rate application. In such a review the Board would require evidence from the utility respecting the level of these types of costs on a municipality specific basis. Until the Board can review these costs in that manner, it is considered that any costs should only be recovered on a municipality specific basis.

8 OTHER ISSUES

8.1 Rights of Aboriginal Communities

Position of Aboriginal Communities

The Aboriginal Communities supported the concept of a standard franchise agreement but were concerned about the lack of motivation of the utilities to provide the same rights to the Aboriginal Communities pursuant to a permit under section 28(2) of the *Indian Act*. The Aboriginal Communities would want such an agreement to include a fixed term and an option to purchase the system in the same way that franchise agreements provide these.

Views of the Board

The Board notes that section 28(2) of the *Indian Act* refers to the federal Minister of Indian Affairs. The Board encourages the aboriginal communities to direct their concerns regarding permits under this section to the Department of Indian Affairs, Government of Canada.

8.2 Clause 5 of the Standard Agreement – Calculation of Franchise Fee

Positions of the Parties

CCA stated that clause 5 (c) of the agreement should be revised from "the company shall pay the franchise fee amount **billed to** each customer to the municipality on a monthly basis within days after collection from each consumer" to "the company shall pay the franchise fee amount **collected from** each customer to the municipality on a monthly basis within days after collection from each consumer". This would ensure that the utility would not take on an increased risk for the collection of a tax.

AUMA responded to this by stating that the current wording is consistent with the manner in which franchise fees are paid at this time. The franchise fee is a consideration paid by the utilities to the municipalities regardless of bad debt issues.

Views of the Board

The Board considers that the wording included in the Standard Agreement is reasonable when considering that the franchise fee is intended as a formula for calculation of a fee. The Board considers that the utilities have sufficient opportunity to decrease any risks associated with bad debts through their security deposit and disconnection clauses included in their service regulations, as approved by the Board.

8.3 Modifications to the Standard Agreement

Position of Grande Prairie

The City of Grande Prairie (Grande Prairie) supported the Standard Agreement as a sample agreement, which should be open to modification in negotiations between the municipality and the utility. Grande Prairie argued that modifications might be necessary to allow for the special circumstances of the municipality.

Views of the Board

The Board considers that the Standard Agreement would be available to assist municipalities in their negotiations only. As noted earlier, the Standard Agreement is a template to assist the parties in arriving at a mutually acceptable negotiated agreement. Municipalities could still negotiate an agreement that does not make use of the Standard Agreement or modifies the Standard Agreement. However, the Board recognizes that negotiations with utilities may be more time consuming if municipalities want to make substantial changes to the Standard Agreement. It is therefore recommended that should municipalities enter into the Standard Agreement and wish to have substantial modifications when the agreement is renewed, they should initiate negotiations with the utility in sufficient time to complete negotiations before the termination of the agreement.

9 CONCLUSION

The Board commends the Applicants for the efforts they have expended to date in arriving at a standard franchise agreement which addresses many of the issues arising out of the restructuring of the electric industry. As discussed earlier, the Board considers the use of a standard agreement will be beneficial to all parties.

Nonetheless, the Board does have some concerns with certain of the clauses within the Standard Agreement. It is hoped that parties will consider these concerns and the Board's recommendations prior to the submission of an actual application for Board approval. All individual franchise applications will, of course, still require Board review and approval pursuant to section 45 of the MG Act.

The Board notes the concern of CCA that all interested parties to this Application should be notified at the time the first application is filed containing the Standard Agreement template, to allow for a thorough review by all affected stakeholders. Consequently, the Board directs the Applicants to provide interested parties with a copy of such application at the same time as it is filed with the Board.

Dated in Calgary, Alberta on June 19, 2001.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

T. M. McGee
Presiding Member

(original signed by)

Gordon J. Miller
Member

(original signed by)

Jeff Gilmour
Acting Member

APPENDIX 1

THOSE WHO PARTICIPATED IN THE PROCEEDING

Principals and Representatives (Abbreviations Used in the Decision)	Witnesses
Alberta Urban Municipalities Association (AUMA)	
J. A. Bryan, Q.C.	J. McGowan
ATCO Electric Ltd. (AE)	
E. J. Barichello	J. Twyman
C. L. Hunt	
UtiliCorp Networks Canada (UNC)	
K. F. Miller	L. Sirman
Consumers Coalition of Alberta (CCA)	
J. A. Wachowich	
City of Grande Prairie (Grande Prairie)	
S. S. Lee	
Aboriginal Communities	
J. Graves	
Industrial Power Consumers and Cogenerators Association of Alberta (IPCCAA)	
D. E. Crowther	
Senior Petroleum Producers Association (SPPA)	
D. Hildebrand, P.Eng., MBA	
TransCanada Energy Ltd. (TransCanada)	
B. L. Andriachuk	

APPENDIX 2

RELEVANT LEGISLATION

Municipal Government Act, S.A. 1994, c. M-26.1

6 A municipality has natural person powers, except to the extent that they are limited by this or any other enactment.

43(1) A person who uses, receives or pays for a municipal utility service may appeal a service charge, rate or toll made in respect of it to the Public Utilities Board, but may not challenge the public utility rate structure itself.

(2) If the Public Utilities Board is satisfied that the persons service charge, rate or toll

(a) does not conform to the public utility rate structure established by the municipality,

(b) has been improperly imposed, or

(c) is discriminatory,

the Board may order the charge, rate or toll to be wholly or partly varied, adjusted or disallowed.

45(1) A council may, by agreement, grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years.

(2) The agreement may grant a right, exclusive or otherwise, to use the municipality's property, including property under the direction, control and management of the municipality, for the construction, operation and extension of a public utility in the municipality for not more than 20 years.

(3) Before the agreement is made, amended or renewed, the agreement, amendment or renewal must

(a) be advertised, and

(b) be approved by the Public Utilities Board.

(4) Subsection (3)(b) does not apply to an agreement to provide a utility service between a council and a regional services commission.

(5) Subsection (3) does not apply to an agreement to provide a utility service between a council and a subsidiary of the municipality as defined in section 1(2) of the *Electric Utilities Ac*

47(1) An agreement referred to in section 45 that is not renewed continues in effect until either party, with the approval of the Public Utilities Board, terminates it on 6 months notice.

(2) If notice to terminate has been given under subsection (1), the municipality has the right to purchase the rights, systems and works of the public utility.

(3) If the municipality wishes to purchase the rights, systems and works and no agreement on the purchase can be reached, either party may refer the matter to the Public Utilities Board.

(4) After the matter is referred to the Public Utilities Board, the Board must by order fix the terms and price of the purchase and the order is binding on the parties.

61(1) A municipality may grant rights, exclusive or otherwise, with respect to its property, including property under the direction, control and management of the municipality.

(2) A municipality may charge fees, tolls and charges for the use of its property, including property under the direction, control and management of the municipality.

353(1) Each council must pass a property tax bylaw annually.

(2) The property tax bylaw authorizes the council to impose a tax in respect of property in the municipality to raise revenue to be used towards the payment of

(a) the expenditures and transfers set out in the budget of the municipality, and

(b) the requisitions.

(3) The tax must not be imposed in respect of property

(a) that is exempt under section 351, 361 or 362, or

(b) that is exempt under section 363 or 364, unless the bylaw passed under that section makes the property taxable.

360(1) A council may make a tax agreement with an operator of a public utility or of linear property who occupies the municipality's property, including property under the direction, control and management of the municipality.

(2) Instead of paying the tax imposed under this Division and any other fees or charges payable to the municipality, the tax agreement may provide for an annual payment to the municipality by the operator calculated as provided in the agreement.

(3) A tax agreement must provide that the municipality accepts payment of the amount calculated under the agreement in place of the tax and other fees or charges specified in the agreement.

(4) If a tax agreement with the operator of a public utility which supplies fuel provides for the calculation of the payment as a percentage of the gross revenue of the public utility, that gross revenue is the aggregate of

$$gr + (qu.ns \times vpu)$$

where:

"gr" is the gross revenue of the public utility for the year;

"qu.ns" is the quantity of fuel in respect of which transportation service was provided during the year by means of the fuel distribution system of the provider of the public utility;

"vpu" is the deemed value per unit quantity of fuel determined by the Public Utilities Board for that year for the fuel in respect of which transportation service was so provided.

(4.1) If a tax agreement with the operator of a public utility that transports electricity by way of a transmission system, an electric distribution system, or both, provides for the calculation of the payment as a percentage of the gross revenue of the public utility, that gross revenue is

(a) gr, or
(b) gr + (qu.ns x vpu),

where:

"gr" is the gross revenue received by the public utility under its distribution tariff for the year;

"qu.ns" is the quantity of electricity in respect of which system access service, distribution access service, or both, were provided during the year by means of the transmission system, the electric distribution system, or both, of the provider of the public utility;

"vpu" is the deemed value per unit quantity of electricity determined by the Alberta Energy and Utilities Board for that year for the electricity in respect of which system access service, distribution access service, or both, were so provided.

(4.2) In subsection (4.1), "distribution access service", "electric distribution system", "electricity", "system access service" and "transmission system" have the meanings given to them in the *Electric Utilities Act*.

(5) An agreement under this section with an operator who is subject to regulation by the Public Utilities Board is of no effect unless it is approved by the Public Utilities Board.

Electric Utilities Act, S.A. 1995, c. E-5.5

51(1) When considering whether to approve a tariff that is to have effect after December 31, 1995, the Board shall ensure

(c) that the tariff is not unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this or any other enactment or any law.

55 The owner of an electric utility and the Transmission Administrator shall not put into effect a tariff that has not been approved by the Board.

58 (3) The owners of electric utilities and the Transmission Administrator shall not act in a manner that is unjust, unreasonable, unduly preferential, arbitrarily or unjustly

discriminatory or inconsistent with or in contravention of this or any other enactment or any law.

61(1) A right to distribute electricity granted by a municipality to an owner of an electric distribution system after December 31, 1995 has no effect unless the grant is approved by the Board.

(2) Approval may be given when, after hearing the interested parties or with the consent of the interested parties, the Board determines that the grant is necessary and proper for the public convenience and to properly serve the public interest.

(3) The Board may, in giving its approval, impose any conditions as to construction, equipment, maintenance, service or operation that the public convenience and the public interest reasonably require.

(4) Where a municipality grants a right under subsection (1) to its subsidiary, the grant need not be approved by the Board.

(5) A municipality shall not grant to another municipality or to a corporation controlled by another municipality the right to distribute electricity to customers in the granting municipality, unless the grant

(a) is approved by the Board, and

(b) is authorized by regulations under subsection (6).

(6) On the recommendation of the Minister that a grant under subsection (5) is, in the Minister's opinion, in the public interest, the Lieutenant Governor in Council may make regulations authorizing the grant and respecting any conditions that apply to the grant.

(7) When a municipality wishes to grant a right to distribute electricity under subsection (5) and all of the customers in the granting municipality are located in the service area of the municipality to which the right is to be granted, as that service area exists on the date this Act comes into force, regulations authorizing the grant are not required.

(8) For the purpose of subsection (5), a corporation is controlled by a municipality if the test set in section 1(2) of the *Municipal Government Act* is met.

Gas Distribution Act, S.A. 1994, c. G-15

33(1) The *Gas Utilities Act* does not apply to a rural gas utility operated by a rural gas co-operative association or municipal gas utility, but

(a) a rural gas co-operative association or municipal gas utility shall file a copy of its schedule of rates, tolls and charges with the Alberta Energy and Utilities Board, and

(b) a consumer who is receiving gas service from a rural gas utility operated by a rural gas co-operative association or municipal gas utility and who has a grievance respecting terms of service, service charges, rates or tolls made to that consumer may, by application, appeal the matter to the Alberta Energy and Utilities Board.

(2) If, on hearing an application made under subsection (1), the Alberta Energy and Utilities Board is satisfied that the term, service charge, rate or toll

(a) does not conform to the utility rate structure established by the rural gas co-operative association or municipal gas utility,

(b) has been improperly imposed, or

(c) is discriminatory,

the Alberta Energy and Utilities Board may make an order varying, adjusting or disallowing the whole or any part of that term, charge, rate or toll.

Indian Act, R.S.C. 1985, c. I-6

28. (1) Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

SCHEDULE "A"

ELECTRIC DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

Version to be submitted to EUB
November 21, 2000

TABLE OF CONTENTS

1) DEFINITIONS ..... Page 1
2) INITIAL TERM ..... Page 3
3) RENEWAL ..... Page 3
4) GRANT OF FRANCHISE ..... Page 4
5) FRANCHISE FEE ..... Page 5
6) CORE SERVICES ..... Page 6
7) PROVISION OF EXTRA SERVICES ..... Page 6
8) MUNICIPAL TAXES ..... Page 6
9) RIGHT TO TERMINATE ON DEFAULT ..... Page 6
10) SALE OF DISTRIBUTION SYSTEM ..... Page 7
11) STREET LIGHTING ..... Page 7
12) INCREASE IN MUNICIPAL BOUNDARIES ..... Page 10
13) RIGHT OF FIRST REFUSAL TO PURCHASE ..... Page 10
14) CONSTRUCTION/MAINTENANCE OF DISTRIBUTION SYSTEM ..... Page 11
15) RESPONSIBILITIES FOR COST OF RELOCATION ..... Page 13
16) DISTRIBUTION SYSTEM EXPANSION ..... Page 14
17) JOINT USE OF DISTRIBUTION SYSTEM ..... Page 14
18) OPEN ACCESS ..... Page 16
19) MUNICIPALITY AS RETAILER ..... Page 17
20) RECIPROCAL INDEMNIFICATION AND LIABILITY ..... Page 17
21) ASSIGNMENT ..... Page 17
22) NOTICES ..... Page 18
23) INTERRUPTIONS OR DISCONTINUANCE OF ELECTRIC SERVICE ..... Page 19
24) DISPUTE SETTLEMENT ..... Page 19
25) APPLICATION OF WATER, GAS AND ELECTRIC COMPANIES ACT ..... Page 20
26) FORCE MAJEURE ..... Page 20
27) TERMS AND CONDITIONS ..... Page 21
28) NOT EXCLUSIVE AGAINST HER MAJESTY ..... Page 21
29) SEVERABILITY ..... Page 21

ELECTRIC DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

THIS AGREEMENT made effective the ____ day of _____, 2001.

BETWEEN:

_____, a Municipal Corporation in the Province of Alberta (the "**Municipality**")

OF THE FIRST PART

- and -

_____, a body corporate and public utility with its head office at the City of _____, in the Province of Alberta (the "**Company**")

OF THE SECOND PART

WHEREAS the Municipality desires to grant and the Company desires to obtain an exclusive franchise to provide distribution access service within the Municipality on the terms and conditions herein contained;

NOW THEREFORE in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1) DEFINITIONS

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

a) **"Act"** means the Electric Utilities Act (Alberta) as amended;

b) **"Board"** means the Alberta Energy and Utilities Board as established under the Alberta Energy and Utilities Board Act (Alberta), as amended;

c) **"Company"** means the party of the second part to this Agreement and includes its successors and assigns;

d) **"Construct"** means and includes establish, construct, reconstruct, upgrade or extend any part of the existing Distribution System or proposed Distribution System;

e) **"Consumer"** means any individual, group of individuals, firm or body corporate, including the Municipality, with premises or facilities within the boundaries of the Municipality including any areas annexed by the Municipality from time to time that is provided with Distribution Access Service by the Company pursuant to the Company's Distribution Tariff;

f) **"Core Services"** means all those services set forth in Schedule "A";

g) "**Distribution Access Service**" means Distribution Access Service described in the Company's Distribution Tariff;

h) **"Distribution System"** means any facilities owned by the Company used to provide Distribution Access Service within the boundaries of the Municipality, and without limiting the generality of the foregoing, shall include street and decorative lighting, where applicable, poles, fixtures, luminaires, guys, hardware, insulators, wires, conductors, cables, ducts, meters, transformers, fences, vaults and connection pedestals, excluding any transmission facilities as defined in the Act;

i) "**Distribution Tariff**" means the Distribution Tariff prepared by the Company and approved by the Board on an interim or final basis, as the case may be;

j) **"Extra Services"** means those services set forth in Schedule "B" that are requested by the Municipality on behalf of the Consumer and provided by the Company in accordance with Article 7;

k) "**Initial Term**" means the initial term of this Agreement set out in Article 2;

l) **"Maintain"** means to maintain, keep in good repair or overhaul any part of the Distribution System;

m) "**Major Work**" means any line work to Construct or Maintain the Distribution System that costs more than Fifty Thousand ($50,000) Dollars;

n) **"Municipality**" means the party of the first part to this Agreement or, where the context implies an area, the area within the boundaries of the Municipality as altered from time to time but does not include an increase in area as specified in Article 12(i);

o) **"Municipal Property"** means all property, including lands and buildings, owned, controlled or managed by the Municipality within the Municipality;

p) **"Operate"** means to operate, interrupt or restore any part of the Distribution System in a safe and reliable manner;

q) **"Term"** means the Initial Term of this Agreement set out in Article 2 including any renewal pursuant to Article 3;

r) "**Terms and Conditions**" means the terms and conditions contained within the Distribution Tariff in effect from time to time for the Company as approved by the Board;

s) **"Wire Services Provider"** shall have the meaning ascribed to it in the Act and the Roles, Relationships and Responsibilities Regulation, AR 86/2000;

t) "**Work**" means any work to Construct or Maintain the Distribution System.

2) **INITIAL TERM**

This Agreement shall be for an initial term of 10 years, commencing on the ____ day of _____, 200_.

3) **RENEWAL**

a) Following the expiration of the Initial Term, this Agreement shall be renewed one time for a further period of 5 years, provided the Company gives written notice to the Municipality not less than twelve (12) months prior to the expiration of the Initial Term of its intention to renew the Agreement and the Municipality agrees in writing to the renewal not less than six (6) months prior to the expiration of the Initial Term.

b) During the first year following the expiration of the Initial Term all the rights and obligations of the parties under this Agreement shall continue to be in effect.

c) At any time following the expiration of the Initial Term, if the Municipality has not provided notice to the Company to exercise its right under Article 10 to require the Company to sell the Distribution System, either party may submit any items in dispute pertaining to the renewal of this Agreement or to a new agreement, as the case may be, to binding arbitration by the Board.

d) Commencing one year following the expiration of the Initial Term, unless either party has invoked the right to arbitration referred to in subparagraph (c), this Agreement shall continue to be in effect but shall be amended to provide for the following:

i) the franchise fee percentage used to calculate the franchise fee payable by the Company under Article 5 shall be reduced to fifty (50%) percent of the average annual franchise fee percentage used to calculate the franchise fee paid by the Company to the Municipality for the previous five (5) calendar years of the Agreement; and

ii) the costs of any relocations requested by the Municipality pursuant to Article 15 shall be paid by the Municipality.

4) GRANT OF FRANCHISE

a) Subject to the terms and conditions hereof, the Municipality hereby grants to the Company the exclusive right within the Municipality:

i) to Construct, Operate, and Maintain the Distribution System; and

ii) to use designated portions of roads, rights-of-way, and other lands owned, controlled or managed by the Municipality necessary to Construct, Operate and Maintain the Distribution System, including the necessary removal, trimming of trees, shrubs or bushes or any parts thereof.

This grant shall not preclude the Municipality from providing wire services to municipally owned facilities where stand alone generation is provided on site or immediately adjacent sites excepting road allowances. Such services are to be provided by the Municipality directly and not by any other third party Wire Services Provider.

b) The Company agrees to:

i) bear the full responsibility of an owner of an electric distribution system and to ensure all services provided pursuant to this Agreement are in accordance with the Distribution Tariff, insofar as applicable;

ii) Construct, Operate and Maintain the Distribution System;

iii) use designated portions of roads, rights-of-way, and other lands including other lands owned, controlled or managed by the Municipality necessary to Construct, Operate and Maintain the Distribution System, including the necessary removal, trimming of trees, shrubs or bushes or any parts thereof;

iv) use the Municipality's roads, rights-of-way and other Municipal Property granted hereunder solely for the purpose of providing Distribution Access Service and any other service contemplated by this Agreement.

5) **FRANCHISE FEE**

Calculation of Franchise Fee

a) In consideration of the grant of franchise and the mutual covenants herein, the Company agrees to pay to the Municipality a franchise fee. For each calendar year the franchise fee will be calculated as a percentage of the Company's actual gross revenue in that year from the Distribution Tariff rates charged to Consumers for Distribution Access Service within the Municipality. For the first calendar year of the Term of this Agreement, the franchise fee percentage shall be _____ (___%) percent.

By no later than October 1 of each year, the Company shall: (i) advise the Municipality in writing of the gross revenues that were derived from the Distribution Tariff within the existing boundaries of the Municipality for the prior calendar year; and (ii) with the Municipality's assistance, provide in writing an estimate of gross revenues to be derived from the Distribution Tariff within the boundaries of the Municipality for the next calendar year.

By no later than December 1 of each year, the Municipality shall advise the Company in writing of the franchise fee percentage to be charged.

Adjustment to Franchise Fee

b) At the option of the Municipality, the franchise fee percentage may be changed annually by providing written notice to the Company by December 1 of each year, and the change is effective for the next calendar year.

Payment of Franchise Fee

c) The Company shall pay the franchise fee amount, billed to each Consumer, to the Municipality on a monthly basis within forty-five (45) days after billing each Consumer.

Reporting Considerations

d) The Company shall provide to the Municipality along with payment of the franchise fee amount, the financial information used by the Company to verify the franchise fee amount.

The Company shall, to the extent required by law, require each retailer to disclose to each Consumer the franchise fee amount, in dollars, on each bill.

6) CORE SERVICES

The Company agrees to provide those Core Services to the Municipality as set forth in Schedule "A" and further agrees to the process contained in Schedule "A".

7) PROVISION OF EXTRA SERVICES

Subject to an agreement being reached on cost and terms of payment, the Company agrees to provide to the Municipality those Extra Services, if any, as set forth in Schedule "B", as requested by the Municipality from time to time. The Company is entitled to receive from the Municipality a reasonable amount for the provision of those Extra Services in accordance with Schedule "B".

8) MUNICIPAL TAXES

Amounts payable to the Municipality pursuant to the terms and conditions hereof shall be in addition to the municipal taxes and other levies or charges made by the Municipality against the Company, its land and buildings, linear property, machinery and equipment, and the Distribution System.

9) RIGHT TO TERMINATE ON DEFAULT

In the event either party breaches any material provision of this Agreement, the other party may, at its option, provide written notice to the party in breach to remedy such breach. If the said breach is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required by the party in breach using best efforts on a commercially reasonable basis, to remedy the breach, the party not in breach may give six (6) months notice in writing of the termination to the other party, and unless such breach is remedied to the satisfaction of the party not in breach acting reasonably this Agreement shall terminate subject to prior Board approval.

10) **SALE OF DISTRIBUTION SYSTEM**

Upon the expiration of the Term of this Agreement or the inapplicability of this Agreement to a portion of the Distribution System as contemplated in Article 12(i), or the termination of this Agreement pursuant to the terms and conditions hereof or by operation of law or order of a governmental authority or court of law having jurisdiction, the Municipality may, subject to the approval of the Board, (i) exercise its right to require the Company to sell to it the Distribution System pursuant to the provisions of the Municipal Government Act (Alberta), as may be amended, where applicable, or (ii) if such right to require the Company to sell the Distribution System is either not applicable or has been repealed, require the Company to sell to it the Distribution System. If the parties are unable to agree on price or terms and conditions of the purchase, the unresolved matters shall be referred to the Board for determination.

11) **STREET LIGHTING**

Investment Rate

a) The Company agrees to provide and maintain existing investment street lighting within the Municipality to the level of service and standards specified in the appropriate rate for investment street lighting. This Board approved rate includes an allowance for the replacement of street lighting.

The Company agrees to provide and maintain existing investment standard decorative lighting within the Municipality to the level of service and standards specified in the appropriate rate for investment street lighting. This Board approved rate includes an allowance for the replacement of standard decorative lighting.

The Company and Municipality agree that all new Company owned street lighting and all new Company owned standard decorative lighting provided after the date of this Agreement will be charged to the Municipality on the basis of the Company investment rate.

Non-Investment Rate

b) For existing Company non-investment rate street lighting the Company agrees to maintain street lighting within the Municipality to the level of service and standards specified in the appropriate rate for non-investment street lighting. This Board-approved rate does not include an allowance for the replacement of street lighting.

For existing Company non-investment rate standard decorative lighting the Company agrees to maintain standard decorative lighting within the Municipality to the level of service and standards specified in the appropriate rate for non-investment standard decorative lighting. This Board-approved rate does not include an allowance for the replacement of standard decorative lighting.

Whenever there is a required replacement or Municipally requested relocation of any Company non-investment rate street lighting, the Municipality agrees that such replaced or relocated street lighting shall be converted to the Company investment rate.

Whenever there is a required replacement or Municipally requested relocation of any Company non-investment rate standard decorative lighting, the Municipality agrees that such replaced or relocated standard decorative lighting shall be converted to the Company investment rate.

Conversion of Non-Investment Rate to Investment Rate

c) The Municipality has the option to convert the Company non-investment street and decorative lighting rates to the Company investment street and standard decorative lighting rates upon providing sixty (60) days written notice to the Company. To do so the Municipality has the right to obtain a refund of certain construction contributions paid to the Company for street and standard decorative lighting up to the maximum Board approved Company investment levels. The refund for street and standard decorative lighting shall be calculated according to the following formula:

The lesser of:
(i) $A \times (1 - N/30)$,
and
(ii) $B \times (1 - N/30)$.

Where:

A = the maximum allowable Board-approved Company investment per street light;

B = the actual contribution made by the Municipality in each street or standard decorative light;

N = the age of the street light in years.

The Company will not make refunds for select portions of the street lighting, rather the refund applies to all the non-investment street and standard decorative lighting within the Municipality. The Company, in consultation with the Municipality, may use the average age of street lights and the average contributions made by the Municipality in calculating refunds.

Once all street lighting within the Municipality has been converted to the applicable Company investment rate, the Company shall provide and maintain street lighting within the Municipality to the level of service and standards specified in Schedule "C".

The level of service outlined in Schedule "C" will also apply to standard decorative street lighting that is on the Company investment rate.

Street Light Rates

d) The distribution rates charged by the Company to the Municipality for street lighting and standard decorative lighting shall include only those costs and expenses that pertain to street lighting facilities all at rates approved by the Board. The costs for maintenance and servicing of non-standard decorative lighting are outlined in Schedule "B".

Municipality Owned Street Lighting

e) Notwithstanding any other provision of this Article, it is understood and agreed that the Municipality shall have the right to own street lighting and pay the applicable rate recognizing the Municipality's ownership.

In such cases where the Municipality owns its street lighting (including decorative, non-decorative or otherwise), the Municipality agrees that:

(i) It will bear sole and full responsibility for any liability resulting therefrom and for properly operating, servicing, maintaining, insuring and replacing such street lighting in accordance with good and safe electrical operating practices;

(ii) Such street lighting is not to form part of the Distribution System and shall be capable of being isolated from the Distribution System;

(iii) Such street lighting will be separately metered.

Street Light Inventory

f) The Company shall provide to the Municipality within six (6) months of executing this Agreement an inventory of all street lighting facilities within the Municipality detailing those that: (i) form part of the Distribution System and indicate whether they are jointly used by the Company and a third party, or otherwise; and (ii) are a dedicated street light facility and indicate whether they are jointly used by the Company and a third party, or otherwise. The inventory shall, where commercially practicable, indicate which street lights are at the investment rate or the non-investment rate. Any changes to inventory will be updated on an annual basis.

12) INCREASE IN MUNICIPAL BOUNDARIES

Where the Municipality increases its area through annexation or otherwise by the greater of 640 acres and 25% of the then current area, the Municipality shall have the right to:

(i) Purchase the portion of the Distribution System within the increased area provided that the Municipality gives notice in writing to the Company of its intention to purchase within ninety (90) days of the effective date of the increase in area;

(ii) Require the Company to charge the consumers within the increased area a different franchise fee percentage if the Municipality chooses not to exercise its right to purchase the portion of the Distribution System within the increased area and the remaining provisions of this Agreement shall apply to such increased area; or

(iii) Add the increased area to the Municipality already served by the Company so that the rights and obligations contained in this Agreement will apply in respect of the whole Municipality, including the increased area.

For all other increases to the Municipality area through annexation or otherwise, the rights and obligations contained in this Agreement will apply in respect of the whole Municipality, including the increased area.

13) RIGHT OF FIRST REFUSAL TO PURCHASE

(a) If during the Term of this Agreement, the Company receives a *bona fide* offer to operate, take control of or purchase the Distribution System which the Company is willing to accept, then the Company shall promptly give written notice to the Municipality of the terms and conditions of such offer and the Municipality shall during the next ninety (90) days, have the

right of first refusal to operate, take control of or purchase the Distribution System, as the case may be, for the same price and upon the terms and conditions contained in the said offer.

(b) This right of first refusal only applies where the offer pertains to the Distribution System and the right of first refusal does not apply to offers that include any other distribution systems or distribution facilities of the Company located outside of the Municipality. If such offer includes other distribution systems of the Company, the aforesaid right of first refusal shall be of no force and effect and shall not apply.

14) **CONSTRUCTION/MAINTENANCE OF DISTRIBUTION SYSTEM**

Municipal Approval

a) Before undertaking any Major Work or in any case in which the Municipality specifically requests the same, the Company will submit to and obtain the approval from the Municipality, or its authorized officers, of the plans and specifications for the proposed Major Work and its location. Approval by the Municipality shall not signify approval of the structural design or the ability of the work to perform the function for which it was intended.

Prior to commencing any Work, the Company shall obtain such permits as are required by the Municipality.

The Company shall obtain approval from the Municipality of any traffic lane or sidewalk closures required to be made at least forty-eight (48) hours prior to the commencement of the proposed Work.

b) **Restoration of Municipal Property**

The Company agrees that when it or any agent employed by it undertakes any Work on any Municipal Property the Company shall complete the said Work promptly and in a good and workmanlike manner, and, where applicable, in accordance with the approved plans and specifications. Further, the Company shall forthwith restore the Municipal Property to the same state and condition, as nearly as reasonably possible, in which it existed prior to the commencement of such work, subject to reasonable wear and tear.

The Company shall, where reasonable, locate its poles, wires, conduits and cables down, through and along lanes in preference to streets.

The Company further covenants that it will not unduly interfere with the works of others or the works of the Municipality. Where reasonable and in the best interests of both the Municipality and the Consumer, the Company will cooperate with the Municipality and coordinate the installation of the distribution system along the designated rights-of-way pursuant to the direction of the Municipality. During the performance of the Work, the Company shall use commercially reasonable efforts to not interfere with existing Municipal Property. If the Company causes damage to any existing Municipal Property during the performance of any Work, it shall cause such damage to be repaired at its own cost.

Upon default by the Company or its agent to repair damage caused to Municipal Property, the Municipality may provide written notice to the Company to remedy the default. If the default is not remedied with two (2) weeks after receipt of the written notice or such further time as may be reasonably required and requested by the Company using the best efforts on a commercially reasonable basis to remedy the default, the Municipality may undertake such repair work and the Company shall be liable for the reasonable costs thereof.

Urgent Repairs and Notification to Municipality

c) If any repairs or maintenance required to be made to the Distribution System are of an urgent nature where the reliability of the Distribution System is materially compromised or potentially materially compromised, the Company shall be entitled to conduct such repairs or maintenance as are commercially reasonable without prior notice to the Municipality, on the understanding and agreement that the Company will provide written or verbal notice to the Municipality as soon as practicable and in any event no later than 72 hours after the repairs are commenced.

Company to Obtain Approvals from Other Utilities

d) The Company shall be solely responsible for locating, or causing to be located, all existing utilities or utility lines on or adjacent to the Work site. The Company shall notify all other utility operators and ensure that utilities and utility lines are staked prior to commencement of construction. Unless the Municipality has staked the utility lines, staking shall not be deemed to be a representation or warranty by the Municipality that the utility or utility lines are located as staked. The Municipality shall not be responsible for any damage caused by the Company to any utility or any third party as a result of the Company's Work, unless the Municipality has improperly staked the utility lines. Approval must be obtained by the Company from the owner of any third party utility prior to relocation of any facility owned by such third party utility.

As-Built Drawings and Specifications

e) The Company shall provide the Municipality with copies of as-built drawings and specifications for the Distribution System in electronic form if available, and copies of as-built drawings or specifications for any material changes or extensions to the Distribution System which occur from time to time within three (3) months of completion of the work. The Company shall provide the Municipality with copies of any other as-built drawings and specifications as reasonably requested by the Municipality.

Approvals

f) Where any approvals are required to be obtained from either party under this Article, such approvals shall not be unreasonably withheld.

15) **RESPONSIBILITIES FOR COST OF RELOCATION**

Upon receipt of one (1) years notice from the Municipality, the Company shall, at its own expense, relocate to Municipal Property such part of the Distribution System that is located on Municipal Property as may be required by the Municipality due to planned Municipal construction. In order to encourage the orderly development of Municipal facilities and the Distribution System, the Municipality and the Company agree that they will meet regularly to: a) review the long-term facility plans of the Municipality and the Company; b) determine the time requirements for final design specifications for each relocation; and c) determine the increased notice period that may be required beyond one year for major relocations.

In cases of emergency, the Municipality may take any measures that are commercially reasonable and necessary for the public safety with respect to relocating any part of the Distribution System that may be required in the circumstances, and the Company shall reimburse the Municipality for all commercially reasonable expenses incurred thereby.

If the Company fails to complete the relocation of the Distribution System in accordance with the preceding paragraph, or fails to repair or do anything else required by the Company pursuant to this clause in a timely and expeditious manner to the satisfaction of the Municipality's engineer, acting reasonably, the Municipality may, but is not obligated to, complete such relocation or repair and the Company shall pay the reasonable costs of such relocation or repair forthwith to the Municipality. If the Municipality chooses to complete such relocation or repair the Municipality will ensure that such work is completed using the Company's design specifications and standards, as provided by the Company, including the use of good and safe electrical operating practices.

The Municipality is not responsible, either directly or indirectly, for any damage to the equipment which may occur during its installation, maintenance or removal by the Company, nor is the Municipality liable to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company including claims for loss of revenue or loss of profits, on account of the actions of the Municipality, its agents or employees, working in, under, over, along, upon and across its highways and rights-of-ways or other Municipal Property other than direct loss or damage to the Company caused by the negligence or wilful misconduct of the Municipality, its agents or employees.

In the event the relocation or any part thereof requires the approval of the Municipality or a third party, the Municipality will assist the Company in obtaining Municipal approvals and the Municipality will use reasonable efforts to assist the Company in any negotiation with such third party to obtain the necessary approval(s).

In the event the relocation results from the demand or order of an authority having jurisdiction, other than the Municipality, the Municipality shall not be responsible for any of the costs of such relocation.

Subject to Schedules "B" and "C", it is understood and agreed that the Municipality cannot insist on relocating any overhead lines to an underground service if there is a less expensive more practical solution. If there is not a less expensive more practical solution, the Municipality and the Company will meet to negotiate suitable arrangements.

16) DISTRIBUTION SYSTEM EXPANSION

At no cost to the Municipality, with the exception of Customer contributions, the Company shall, at its sole cost and expense, on a timely basis and pursuant to its Terms and Conditions, use its best efforts on a commercially reasonable basis to meet the Distribution System expansion requests of the Municipality or a Consumer, and provide the requisite facilities for connections for new Consumers to the Distribution System.

17) JOINT USE OF DISTRIBUTION SYSTEM

Municipal Use

a) The Municipality shall upon notice to the Company have, for any reasonable municipal purpose (which does not include a third party business such as a cable or telecommunications business), the right to and make use of the poles and conduits of the Company, and any rights-of-way granted to the Company, provided such use complies with good and safe electrical operating practices, applicable legislation, and does not unreasonably interfere with the Company's use thereof, at no charge to the Municipality.

The Municipality is responsible for its own costs and any necessary and reasonable costs incurred by the Company including the costs of any alterations that may be required in using the poles and conduits of the Company.

Third Party Use and Notice

b) The Company agrees that should any third party including other utilities desire to jointly use the Company's poles, conduits or trenches or related parts of the Distribution System, the Company shall not grant the third party joint use except in accordance with this Article, unless otherwise directed by any governmental authority or court of law having jurisdiction.

The Company agrees that the following procedure shall be used in granting permission to third parties desiring joint use of the Distribution System:

i) first, the third party shall be directed to approach the Company to initially request conditional approval from the Company to use that part of the Distribution System it seeks to use;

ii) second, upon receiving written conditional approval from the Company, the third party shall be directed to approach the Municipality to obtain its written approval to jointly use that part of the Distribution System on any Municipal Property or right-of-way;

iii) third, upon receiving written conditional approval from the Municipality, the third party shall be directed to obtain final written approval from the Company to jointly use that part of the Distribution System.

Providing the Company has not precluded the Municipality's ability to obtain compensation or agreements from any third parties using any Municipal Property, the Municipality agrees that the procedure outlined above shall apply only to agreements made after January 1, 2000.

Cooperation

c) The Company and Municipality agree they will use reasonable efforts to cooperate with each other in any negotiations with third parties desiring joint use of any part of the Distribution System located on Municipal Property.

Payment

d) The compensation paid or to be paid by such third party to the Municipality for the use of the Municipal Property including its rights-of-way, shall be determined between the Municipality and the third party.

The compensation paid or to be paid by such third party to the Company for the joint use of its poles, conduits or related parts of the Distribution System shall be determined between the Company and the third party, subject to the jurisdiction of any governmental authority over the matter and the Municipality's right to intervene in any related regulatory proceeding.

Provision of Agreements

e) The Company shall provide to the Municipality within 6 months of executing this Agreement a copy of all agreements between the Company and any third parties involved in the: (i) joint use of any part of the Distribution System; and, (ii) in the joint use of any street lighting.

Upon reasonable request by the Municipality, copies of these agreements and inventory list shall be updated by the Company and provided to the Municipality at no cost to the Municipality.

The Company acknowledges that it does not have the authority to allow nor to grant to any third party the right to use any right-of-way that the Municipality authorized the Company to use.

Compensation for Costs

f) Subject to Article 17(c), in the event that either party to the Agreement is required by law to appear before the Canadian Radio-television and Telecommunications Commission ("CRTC") or a Court of law as a direct result of the actions of the other party ("Denying Party") relating to the denial of use to a third party of any part of the Distribution System, then the Denying Party shall pay all reasonable and necessary legal costs incurred by the other party that are directly related to any such CRTC or Court of law proceeding.

18) **OPEN ACCESS**

The Company shall provide Distribution Access Service to retailers to allow them to carry on their authorized functions in accordance with the Company's Distribution Tariff and the provisions of the Act and any regulations passed pursuant thereto.

19) MUNICIPALITY AS RETAILER

The provisions of this Agreement shall not in any way restrict the right of the Municipality to become a retailer within the meaning of the Act.

20) RECIPROCAL INDEMNIFICATION AND LIABILITY

The Company acknowledges and agrees that the liability protection and indemnification provisions, if any, afforded to it by the Municipality, in its capacity as a customer, under the customer Terms and Conditions (excluding retail terms and conditions) shall apply, with the necessary changes, to the Municipality with reciprocal rights thereunder.

21) ASSIGNMENT

In the event that the Company agrees to sell the Distribution System to a third party purchaser, the Company will request that the third party purchaser confirm in writing that it will agree to all the terms and conditions of this Agreement between the Company and the Municipality. The Company agrees that it will provide to the Municipality a copy of the third party purchaser's confirmation letter.

The Company agrees to provide the Municipality with reasonable prior written notice of a sale of the Distribution System to a third party purchaser. The parties shall thereafter meet to discuss the technical and financial capabilities of the third party purchaser to perform and satisfy all terms and conditions of the Agreement.

The Municipality has thirty (30) days from the meeting date with the Company to provide written notice to the Company of its intention to consent or withhold its consent to the assignment of the Agreement to the third party purchaser. The Municipality agrees that it may provide notice of its intention to withhold its consent to the assignment of this Agreement to the third party purchaser solely on the basis of reasonable and material concerns regarding the technical capability or financial wherewithal of the third party purchaser to perform and satisfy all terms and conditions of the Agreement. In this case, such notice to the Company must specify in detail the Municipality's concern. Should the Municipality not reply within the thirty (30) days, it is agreed that the Municipality will be deemed to have consented to the assignment. The Company further agrees that, when it applies to the Board for approval of the sale, it will include in the application any

notice received from the Municipality, including the reasons given by the Municipality for withholding its consent. The Municipality shall have the right to make its own submissions to the Board.

Subject to the Company having fulfilled the obligations outlined in the preceding three paragraphs, the Company shall be entitled to assign this Agreement to an arm's length third party purchaser of the Distribution System without the consent of the Municipality, subject to having obtained the Board's approval for the sale of the Distribution System and, the third party purchaser's confirmation in writing that it agrees to all the terms and conditions of this Agreement.

Where the Board approves such sale of the Distribution system to a third party and the third party provides written confirmation to assume all liabilities and obligations of the Company under this Agreement, then upon the assignment of this Agreement the Company shall be released from all its liabilities and obligations thereunder.

The Company shall be entitled to assign this Agreement to a subsidiary or affiliate of the Company without the Municipality's consent. Where the Company assigns this Agreement to a subsidiary or affiliate, the Company will remain jointly and severally liable.

Further, it is a condition of any assignment that the subsidiary, affiliate or third party purchaser, as the case may be, shall provide written notice to the Municipality indicating that it will assume all liabilities and obligations of the Company under this Agreement.

Any disputes arising under the operation of this Article shall be submitted to the Board for determination.

22) **NOTICES**

All notices, demands, requests, consents, or approvals required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if personally served or sent by registered mail or sent by fax to the Municipality or to the Company as the case may be, at the addresses set forth below:

(i) To the Company: _____

_____

Fax _____

(ii) To the Municipality: _____

Fax _____

The date of receipt of any such notice as given above, shall be deemed to be as follows:

(i) In the case of personal service, the date of service;

(ii) In the case of registered mail, the seventh (7^{th}) business day following the date of delivery to the Post Office, provided, however, that in the event of an interruption of normal mail service, receipt shall be deemed to be the seventh (7^{th}) day following the date on which normal service is restored;

(iii) In the case of a fax, the date the fax was actually received by the recipient.

23) INTERRUPTIONS OR DISCONTINUANCE OF ELECTRIC SERVICE

Subject to its Distribution Tariff, the Company shall use its best efforts on a commercially reasonable basis to avoid and minimize any interruption, reduction or discontinuance of Distribution Access Service to any Consumer. However, the Company reserves the right to do so for any one of the following reasons:

(i) Where the Company is required to effect necessary repairs or changes to the Distribution System;

(ii) On account of or to prevent fraud or abuse of the Distribution System;

(iii) On account of defective wiring or other similar condition which in the opinion of the Company, acting reasonably, may become dangerous to life or property;

(iv) Where insufficient energy or power is available for distribution by the Company to a Consumer.

(v) Where required by a Retailer, due to non-payment of power bills.

To the extent the Company has any planned major interruptions, reductions or discontinuances in Distribution Access Service, it shall notify the Municipality as soon as practicable in the circumstances. For any other major interruption, reductions or discontinuances in Distribution Access Service, the Company shall provide verbal notice to the Municipality as soon as is practicable in the circumstances.

24) DISPUTE SETTLEMENT

To the extent permitted by law, the Company and Municipality agree that unresolved disputes pertaining to this Agreement, other than those contemplated in Articles 3 and 21, or those related to the sale of the Distribution System as contemplated in Articles 10 and 12 (i) hereof, or any other matter that is within the

exclusive jurisdiction of a governmental authority having jurisdiction, shall be submitted to arbitration for determination and may be commenced by either party providing written notice to the other party stating the dispute to be submitted to arbitration. The parties shall attempt to appoint a mutually satisfactory arbitrator within 10 business days of the said notice. In the event the parties cannot agree on a single arbitrator within the 10 business days, each party shall appoint an arbitrator within the 10 business days thereafter by written notice, and the two arbitrators shall together appoint a third arbitrator within 25 business days of written notice for arbitration. The dispute shall be heard by the arbitrator(s) within 45 business days of the written notice for arbitration unless extended by mutual agreement between the parties. The arbitrator(s) shall render a decision within 20 business days of the last day of the hearing. Save as otherwise expressly provided in this Agreement, the provisions of the Arbitration Act (Alberta) (as amended from time to time) shall apply to any arbitration undertaken under this Agreement subject always to the Board's jurisdiction over any matter submitted to arbitration. Pending resolution of any dispute, the Municipality and the Company shall continue to perform their respective obligations hereunder.

The Company shall advise the Board of any dispute submitted to arbitration within ten (10) business days of it being submitted and shall advise the Board of the results of arbitration within ten (10) business days following receipt of the decision of the arbitrator(s).

25) APPLICATION OF WATER, GAS AND ELECTRIC COMPANIES ACT

This Agreement shall be deemed to operate as consent by the Municipality to the exercise by the Company of those powers which may be exercised by the Company with the consent of the Municipality under and pursuant to the provisions of the Water, Gas and Electric Companies Act (Alberta), as amended.

26) FORCE MAJEURE

If either party shall fail to meet its obligations hereunder within the time prescribed, and such failure shall be caused or materially contributed by an event of "force majeure", such failure shall be deemed not to be a breach of the obligations of such party hereunder, but such party shall use its best efforts to put itself in a position to carry out its obligations hereunder. The term "force majeure" shall mean any acts of God, strikes, lock-outs, or other industrial disturbances, acts of the Queen's enemies, sabotage, war, blockades, insurrections, riots, epidemics, lightening, earthquakes, storms, fires, wash-outs, nuclear and radiation activity or fall-out, restraints of rulers and people, orders of governmental authorities or courts of law having jurisdiction, the inability to obtain any necessary approval from a governmental authority having jurisdiction (excluding municipal governments), civil disturbances, explosions, mechanical failure, and any other causes similar in nature not specifically enumerated or otherwise specified herein that are not within the control of such party, and all of which by the exercise of due diligence of such party could not have been prevented. Lack of finances shall be deemed not to be an event of "force majeure".

27) **TERMS AND CONDITIONS**

The Terms and Conditions that apply to the Company and are approved by the Board, as revised or amended from time to time by the Board, shall apply to the Municipality.

28) **NOT EXCLUSIVE AGAINST HER MAJESTY**

Notwithstanding anything to the contrary herein contained, it is mutually understood and agreed that the rights, powers and privileges conferred and granted by this Agreement shall not be deemed to be exclusive against Her Majesty in the right of the Province of Alberta.

29) **SEVERABILITY**

To the extent permitted by law, any provision of this Agreement which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining portions hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

[Name of Municipality]

PER: _____

Mayor

PER: _____

Chief Administrative Officer
(Bylaw attached)

[Name of Company]

PER: _____

PER: _____

SCHEDULE "A"
Core Services

The Company shall provide to the Municipality the following basic services as Core Services:

1) The Distribution Access Service required to be provided by the Company pursuant to the Company's Distribution Tariff, the Act, any regulations thereto, and any Board Orders;

2) The Company shall provide to the Municipality, on request, copies of any and all Distribution Access Service related written information or reports required to be filed with the Board, with the exception of responses to questions from interveners or the Board related to rate hearings. A list of service area wide distribution services related measures requested by the Board could include:

   i) The results of customer satisfaction surveys relating to the services provided by the Company;

   ii) The indices of system reliability;

   iii) The responses to notification of outages and hazards;

   iv) Call Centre targets and statistics as related to the services provided by the Company;

   v) Field staff appointment statistics;

   vi) Consumer connect service and disconnect service statistics;

   vii) Meter reading frequency and accuracy statistics;

   viii) Customer complaints related to the services provided by the Company;

   ix) Employee safety statistics.

   Notwithstanding the above, should the Company implement Board approved Performance Based Regulation(PBR), it will provide the Municipality, on request, the results of the Performance Standards as set out in the PBR.

3) The Company shall provide to the Municipality, upon request, an annual report on the following standards specific to the Municipality:

   i) Reliability measures, to the extent that distribution feeders are a proxy to the overall reliability for the Municipality. In some cases the distribution feeder information will be a good proxy for the overall reliability in a Municipality. In other cases, where the distribution feeder serves customers outside of the Municipal Boundaries, it may not be a good proxy;

   ii) The total number of outages, by distribution feeder;

   iii) The average duration of the outages, by distribution feeder;

   iv) Customer complaint statistics related to Distribution Access Service as available within the Municipality;

   v) The results of any local customer surveys agreed to between the Company and the Municipality;

   vi) The number of major repairs to the Distribution System where the individual repair is in excess of $50,000 and the work caused a major outage or disrupted Municipal facilities or services;

   vii) Street light performance, as discussed in Schedule "C";

   viii) Numbers of fire and police emergency calls received from the Municipality, as available.

4) The Company shall provide an annual report of material activities in the past year and planned activities for the next year summarizing the information referred to in paragraphs 2 and 3 above.

5) The Company agrees to strive for continual improvement, balancing the need for improvements on performance with the cost impact on customers;

SCHEDULE "B"
Extra Services

1) Where the Municipality requests Extra Services, the Company will provide its applicable operations and maintenance standards for Distribution System field services.

2) The following represent examples of the types of Extra Services that the Municipality may request:

Service Centre

a) An in-person staffed service centre within the boundaries of the Municipality equipped with necessary technical personnel to handle Distribution Access Service complaints, outages, service calls or any other Distribution Access Service problems.

Improved Street Lighting

b) Frequency of painting street lighting and maintenance standards which are greater than the services outlined in Schedule "C".

If the Company and the Municipality agree that the Company will provide Extra Services requested by the Municipality, the parties shall complete the information required in subparagraph 3), and subparagraph 3) and subparagraph 4) shall apply in respect of such Extra Services. Where the context requires, subparagraph 5) shall apply to such Extra Services.

3) In consideration for the provision of the Extra Services, the Municipality shall pay to the Company the sum of _____ Dollars ($_____) which shall be collected as part of the Franchise Fee.

4) Within sixty (60) days of the end of each calendar year, the Company shall provide a written report to the Municipality, outlining the actual performance of the Extra Services provided and the related costs for each service for the Municipality to assess if the performance standards have been met.

5) Non-standard decorative lights will be owned by the Company. The rates charged by the Company to the Municipality for non-standard decorative street lighting shall include only those costs and other appropriate expenses that pertain to non-standard decorative lighting facilities.

SCHEDULE "C"
Street Lighting

1. The Company agrees to provide the following services for street lighting within the Municipality as part of its Core Services:

   a) **Lights-out Patrols:** On a monthly basis, during the eight winter months (September 15th to May 15th), the Company will conduct a "lights-out" street light patrol to identify lights that are not working. Formal street light patrols will not be conducted during the summer months, however, normal reporting and replacement procedures will be maintained.

   b) **Lights-out:** The Company will replace a burnt out light identified in its patrol or reported by customers, within two weeks. If the reported light is not replaced within two weeks, the Company will provide a two month credit to the Municipality based on the rate in the Distribution Tariff for the burnt out lights. Such two month credit shall continue to apply for each subsequent two week period during which the same burnt out light(s) have not been replaced. The Company agrees to use best commercial efforts to replace burnt out street lights at critical locations as soon as possible. The location of the critical street lights will be agreed to by both parties.

   c) **Underground Breaks:** As a minimum, the Company will provide a temporary overhead repair within two weeks of an identified or reported outage. Underground breaks identified during the summer months of April 15th to September 15th will be repaired (underground) by October 31st of the current summer construction period. A permanent repair will be made by October 31st of the next year if the outage is identified between the winter months of September 15th to April 15th.

   d) **Street light Painting:** The Company will provide a regular street light "painting" patrol as part of its Street light inspection program. The Municipality may request that it participates in select street light inspection patrols and may review the results of the street light inspection program. Street lights that are identified as requiring immediate work through the Street light inspection program will be re-painted by October 31st of the next maintenance season.

   e) **Street light Pole Test Program:** Street lights will be tested at least every nine (9) years as part of the Company's Pole Test Program. This program will identify poles that need to be replaced and those that should be treated. This work will be completed by October 31st of the next summer maintenance season.

f) **Street light Patrol**: The Company will include regular street light inspection patrols as part of its inspection of equipment and lines, as specified in the Alberta Electrical and Communication Utility Code.

2. On an annual basis, the Company will provide the following information to the Municipality:

i. The number of "lights-out" identified from the street light patrols;

ii. The number of temporary overhead repairs at year-end;

iii. The number of permanent underground repairs made during the year;

iv. The number of street lights identified as needing re-painting, poles needing replacing or treatment;

v. The number of street lights re-painted, replaced or treated;

vi. Annual inventory of street lights (can compare to lights billed) within the Municipality;

vii. Planned work completed in past year and planned for next.

This is Schedule "A" referred to in the attached Bylaw No. _____ of the Municipality.

BYLAW NO. _____

OF _____, Alberta

related to the

ELECTRIC DISTRIBUTION SYSTEM
FRANCHISE AGREEMENT

30

Municipal Bylaw

BYLAW NO. _____
OF THE _____, ALBERTA (the "**Municipality**")

A Bylaw of the Municipality to authorize the Mayor and Chief Administrative Officer to enter into an agreement granting _____ (the "**Company**"), the right to provide distribution access services within the Municipality.

WHEREAS pursuant to the provisions of the Municipal Government Act S.A. 1994 c. M-26.1, as amended (the "**Act**"), the Municipality desires to grant and the Company desires to obtain, an exclusive franchise to provide distribution access services within the Municipality for a period of _____ years subject to the right of renewal as set forth in the said agreement and in the said Act;

WHEREAS the Council of the Municipality and the Company have agreed to enter into an Electric Distribution System Franchise Agreement (the "**Agreement**"), in the form annexed hereto;

WHEREAS it is deemed that the Agreement would be to the general benefit of the consumers within the Municipality.

NOW THEREFORE the Council of the Municipality enacts as follows:

1) THAT the Electric Distribution System Franchise Agreement, a copy of which is annexed hereto as Schedule "A", be and the same is hereby ratified, confirmed and approved, and the Mayor and Chief Administrative Officer are hereby authorized to enter into the Electric Distribution System Franchise Agreement for and on behalf of the Municipality, and the Chief Administrative Officer is hereby authorized to affix thereto the corporate seal of the Municipality.

2) THAT the Electric Distribution System Franchise Agreement annexed hereto as Schedule "A" is hereby incorporated in, and made part of, this Bylaw.

3) THAT the Council consents to the exercise by the Company within the Municipality of any of the powers given to the Company by the Water, Gas and Electric Companies Act, R.S.A. 1980 c. W-4, as amended.

4) THAT this Bylaw shall come into force upon the Electric Distribution System Franchise Agreement being approved by the Alberta Energy and Utilities Board and upon being given third reading and finally passed.

Read a First time in Council assembled this ____ day of _____, 2000

_____
Mayor

_____
Chief Administrative Officer

Read a Second time in Council assembled this ____ day of _____, 2000.

Read a Third time in Council assembled and

Passed this ____ day of _____, 2000.

_____
Mayor (seal)

_____
Chief Administrative Officer

The Corporation
of the
DISTRICT OF COLDSTREAM

BYLAW NO. 1442, 2004

BUILDING AND PLUMBING BYLAW

CONSOLIDATED WITH AMENDMENTS

FOR CONVENIENCE ONLY

ADOPTED: December 6, 2004

LATEST AMENDMENT: Bylaw No. 1543, 2008

This Table of Contents is provided for convenience only and does not form part of Bylaw No. 1442

BUILDING AND PLUMBING BYLAW NO. 1442, 2004

TABLE OF CONTENTS

		Page No.
Part 1	Bylaw Name	1
Part 2	Numbering System	1
Part 3	Definitions	1
Part 4	Purpose of Bylaw	3
Part 5	Permit Conditions	3
Part 6	Scope and Exemptions	4
Part 7	Prohibitions	5
Part 8	Responsibilities of the Building Official	5
Part 9	Applications for Permits	6
Part 10	Applications for Complex Buildings	7
Part 11	Applications for Standard Buildings	9
Part 12	Applications for Plumbing Permits	12
Part 13	Retaining Structures	12
Part 14	Professional Plan Certification	12
Part 15	Fees and Charges	13
Part 16	Permit Issuance	13
Part 17	Disclaimer of Warranty or Representation	15
Part 18	Professional Design and Field Review	15
Part 19	Responsibilities of the Owner	15
Part 20	Inspections	16
Part 21	Final Inspection Notice	17
Part 22	Climate Data	18
Part 23	Penalties and Enforcement	18
Part 24	Severability	19
Part 25	Appendices	19
Part 26	Bylaw in Force and Adoption Dates	19
	Appendix 1: Permit Fees	
	Appendix 2: Report on Professional Insurance	
	Appendix 3: Swimming Pool Regulations	

DISTRICT OF COLDSTREAM

BUILDING AND PLUMBING BYLAW NO. 1442, 2004

A BYLAW TO REGULATE THE CONSTRUCTION, ALTERATION, REPAIR OR DEMOLITION OF BUILDINGS, STRUCTURES AND POOLS, AND THE INSTALLATION, ALTERATION OR REPAIR OF PLUMBING IN THE DISTRICT OF COLDSTREAM

WHEREAS the *Community Charter* authorizes the District of Coldstream, for the health, safety and protection of persons and property to regulate the construction, alteration, repair, or demolition of buildings and structures by bylaw;

AND WHEREAS the Province of British Columbia has adopted a *Building Code* to govern standards in respect of the construction, alteration, repair and demolition of buildings in municipalities and regional districts in the Province;

AND WHEREAS it is deemed necessary to provide for the administration of the *Building Code*;

NOW THEREFORE the Council the District of Coldstream, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as the "DISTRICT OF COLDSTREAM BUILDING AND PLUMBING BYLAW NO. 1442, 2004".

2. Numbering System

   A decimal system has been used throughout this Bylaw, as shown in the following example:

3.	Part
3.2	Section
3.2.1	Article
3.2.1.4	Clause

3. Definitions

   3.1 In this Bylaw:

   The following words and terms have the meanings set out in the *British Columbia Building Code*: *assembly occupancy*, *building*, *building area*, *building height*, *business and personal services occupancy*, *care or detention occupancy*, *constructor*, *coordinating registered professional*, *designer*, *field review*, *high hazard industrial occupancy*, *industrial occupancy*, *low hazard industrial occupancy*, *major occupancy*, *mercantile occupancy*, *medium hazard industrial occupancy*, *occupancy*, *owner*, *plumbing system, registered professional*, and *residential occupancy*.

Building Code means the current *British Columbia Building Code* as adopted by the Province of British Columbia and as amended or re-enacted from time to time.

Building Official includes Building Inspectors, Plan Checkers and Plumbing Inspectors designated by the Chief Administrative Officer or designate for the District of Coldstream.

Complex building means:

(a) all *buildings* used for *major occupancies* classified as
  (i) *assembly occupancies*,
  (ii) *care or detention occupancies*,
  (iii) *high hazard industrial occupancies*, and

(b) all *buildings* exceeding 600 square metres (6,460 sq. ft.) in *building area* or exceeding three storeys in *building height* used for *major occupancies* classified as
  (i) *residential occupancies*,
  (ii) *business and personal services occupancies*,
  (iii) *mercantile occupancies*,
  (iv) *medium and low hazard industrial occupancies*.

Health and safety aspects of the work means design and construction regulated by Part 3, Part 4, Part 7, and Sections 9.4, 9.8, 9.9, 9.10, 9.12, 9.14, 9.15, 9.17, 9.18, 9.20, 9.21, 9.22, 9.23, 9.24, 9.31, 9.32, and 9.35 of Part 9 of the *Building Code.*

Owner shall have the meaning ascribed to it in the *Community* Charter.

Standard building means *a building* of three storeys or less in *building height*, having a *building area* not exceeding 600 square metres (6,460 sq. ft.) and used for *major occupancies* classified as
  (a) residential occupancies,
  (b) business and personal services occupancies,
  (c) mercantile occupancies, or
  (d) medium and low hazard industrial occupancies.

Structure means a construction or portion thereof of any kind, whether fixed to, supported by or sunk into land or water, but specifically excludes landscaping, fences, paving and retaining structures less than 1.2 metres (4 feet) in height.

Swimming pool means a private residential pool as defined in the *Health Act* and shall include any constructed or prefabricated pool used or intended for swimming, bathing or wading, having a surface area at the designed water level exceeding 14 square metres (150 sq. ft.) or a depth at any one point of more than 450 mm (18 inches).

3.2 Non-Defined Terms. Definitions of words or phrases used in this Bylaw that are not specifically defined under Section 3.1 of this Bylaw and are not defined under another enactment or the *Building Code* shall have the meanings which are commonly assigned to them in the context in which they are used in this Bylaw, taking into account the specialized use of terms within the various trades and professions to which the terminology applies.

4. Purpose of Bylaw

4.1 This Bylaw shall, notwithstanding any other provision herein, be interpreted in accordance with this Section.

4.2 This Bylaw is enacted and retained for the purpose of regulating construction on land, the surface of water, air space, buildings and structures within the municipal boundaries of the District of Coldstream in the general public interest. The activities undertaken by or on behalf of the District of Coldstream pursuant to this Bylaw are for the sole purpose of providing a limited spot-checking function for health, safety and the protection of persons and property. It is not contemplated nor intended, nor does the purpose of this Bylaw extend:

4.2.1 to the protection of *owners*, owner/builders or *constructors* from economic loss;

4.2.2 to the assumption by the District of Coldstream of any responsibility for ensuring the compliance by any *owner*, his or her representatives or any employees, *constructors* or *designers* retained by him or her, with the *Building Code*, the requirements of this Bylaw or any other applicable enactments respecting safety;

4.2.3 to providing any person a warranty of design or workmanship with respect to any *building* or *structure* for which a building permit or occupancy permit is issued under this Bylaw;

4.2.4 to providing a warranty or assurance that construction undertaken pursuant to building permits issued by the District of Coldstream is free from latent, or any, defects.

5. Permit Conditions

5.1 A permit is required whenever work regulated under this Bylaw is to be undertaken.

5.2 Neither the issuance of a permit under this Bylaw nor the acceptance or review of plans, drawings or specifications or supporting documents, nor any inspections made by or on behalf of the District of Coldstream shall in any way relieve the *owner* or his or her representatives from full and sole responsibility to perform the work in strict accordance with the *Building Code*, this Bylaw and all other codes, standards and applicable enactments respecting safety.

5.3 It shall be the full and sole responsibility of the *owner* (and where the *owner* is acting through a representative, the representative) to carry out the work in respect of which the permit was issued in compliance with the *Building Code*, this Bylaw and all other applicable codes, standards and enactments.

5.4 Neither the issuance of a permit under this Bylaw nor the acceptance or review of plans, drawings or specifications or supporting documents, nor any inspections made by or on behalf of the District of Coldstream constitute in any way a representation, warranty, assurance or statement that the *Building Code*, this Bylaw or any other applicable enactments respecting safety have been complied with.

5.5 No person shall rely upon any permit as establishing compliance with this Bylaw or assume or conclude that this Bylaw has been administered or enforced according to its terms. The person to whom the building permit is issued and his or her representatives are responsible for making such determination.

6. Scope and Exemptions

6.1 This Bylaw applies to the design, construction, and *occupancy* of new *buildings, structures, plumbing systems*, and the alteration, reconstruction, demolition, repair of unsafe conditions, removal, relocation, change in class of occupancy, and *occupancy* of existing *buildings, structures,* and *plumbing systems.*

6.2 This Bylaw does not apply to:

6.2.1 *buildings* or *structures* exempted by Part 1 of the *Building Code* except as expressly provided herein, nor to retaining *structures* less than 1.2 metres (4 feet) in height;

6.2.2 buildings commonly known as greenhouses constructed of a wood, steel, or plastic superstructure covered with a polyethylene film that may be removed during the off season and that is intended to be used temporarily on a seasonal basis for the production of agricultural and horticultural produce or feeds;

6.2.3 roofless open decks/patios, the use of which are ancillary to that of a building classified as residential occupancy for use as a single family dwelling located on the same parcel and which are less than 600 mm (24 inches) above grade to the top of the floor system;

6.2.4 temporary or seasonal plastic, vinyl, or canvas covered structures used as storage facilities;

6.2.5 the repair or replacement of a valve, faucet, fixture or sprinkler head, or a stoppage cleared or a leak repaired if no change in piping is required.

7. Prohibitions

7.1 No person shall commence or continue any construction, alteration, reconstruction, demolition, removal or relocation of any *building* or *structure* or *plumbing system* unless a *Building Official* has issued a valid and subsisting permit for the work.

7.2 No person shall occupy or allow the occupancy of any *building* or *structure,* or part thereof that has been constructed, demolished or altered or has had a change in class of occupancy unless the *owner* has obtained a final inspection or approval in writing from the *Building Official.*

7.3 No person shall carry out any work on, occupy or use any *building* or *structure* or *plumbing system* contrary to the terms of any permit issued or notice given by a *Building Official*.

7.4 No person shall, unless authorized in writing by a *Building Official*, reverse, alter, deface, cover, remove or in any way tamper with any notice, permit or certificate posted upon or affixed to a *building* or *structure* pursuant to this Bylaw.

7.5 No person shall do any work that is substantially at variance with the approved design, plans, or specifications of a *building*, *structure, plumbing system,* or other works for which a permit has been issued, unless that variance has been accepted in writing by a *Building Official*.

7.6 No person shall obstruct the entry of a *Building Official* or other authorized official of the District of Coldstream on property, buildings, structures, or premises in the administration of this Bylaw.

7.7 When a building is damaged above its foundations by fire, decay, storm, earthquake, or otherwise to more than seventy-five percent (75%) of its assessed value as of the date of the damage above its foundations as determined by the *Building Official*, it shall not be repaired or renovated unless in every respect, the whole building, including the undamaged portion, is made to comply with this Bylaw.

8. Responsibilities of the *Building Official*

8.1 Each *Building Official* may:

8.1.1 administer this Bylaw;

8.1.2 keep records of permit applications, permits, notices and orders issued, inspections and tests made, and shall retain copies of all documents related to the administration of this Bylaw or electronic copies of such documents;

8.1.3 establish, if requested to do so, whether the methods or types of construction and types of materials used in the construction of a *building*, *structure or plumbing system* substantially conforms to the requirements of the *Building Code*.

8.2 A *Building Official*:

8.2.1 may enter any land, *building, structure*, or premise at any reasonable time for the purpose of ascertaining that the terms of this Bylaw are being observed; and

8.2.2 shall carry proper credentials confirming his or her status as a *Building Official*.

8.3 A *Building Official* may order the correction of any work that is being or has been done in contravention of this Bylaw.

9. Applications for Permits

9.1 Every person shall apply for and obtain a permit before:

9.1.1 constructing, repairing or altering a *building* or *structure*;
9.1.2 installing, altering, or extending a *plumbing system;*
9.1.3 moving a *building* or *structure*;
9.1.4 demolishing a *building* or *structure*;
9.1.5 constructing a masonry fireplace or chimney;
9.1.6 installing a wood burning appliance;
9.1.7 installing, altering, or extending a sprinkler system;
9.1.8 installing, altering, or extending a fire alarm system;
9.1.9 installing a swimming pool (see Appendix 3 for regulations);
9.1.10 constructing or installing a temporary *building* or *structure;*
9.1.11 installing a sign, awning, canopy, or marquee;
9.1.12 siting a mobile home;
9.1.13 changing a class of occupancy in a building.

9.2 All plans submitted with permit applications shall bear the name and address of the *designer* of the *building* or *structure.*

9.3 Each *building, structure,* or *plumbing system* to be constructed on a site requires a separate permit and shall be assessed a separate permit fee in accordance with Appendix 1 to this Bylaw.

10. Applications for Complex Buildings

10.1 An application for a building permit with respect to a *complex building* shall;

10.1.1 be made in the form prescribed by the Chief Administrative Officer or designate and signed by the *owner,* or a signing officer if the *owner* is a corporation, and the *coordinating registered professional;*

10.1.2 be accompanied by the *owner's* acknowledgment of responsibility and undertakings in the form prescribed by the Chief Administrative Officer or designate signed by the *owner* or a signing officer if the *owner* is a corporation;

10.1.3 include a copy of a title search made within thirty (30) days of the date of the application;

10.1.4 include a site plan prepared by a *registered professional* showing:

10.1.4.1 the bearing and dimensions of the parcel taken from the registered subdivision plan;

10.1.4.2 the legal description and civic address of the parcel;

10.1.4.3 the location and dimensions of all statutory rights-of-way, easements and setback requirements;

10.1.4.4 the location and dimensions of all existing and proposed *buildings* or *structures* on the parcel;

10.1.4.5 setbacks to the natural boundary of any lake, swamp, pond or watercourse where the District of Coldstream's land use regulations establish siting requirements related to flooding;

10.1.4.6 the existing and finished ground levels to an established datum at or adjacent to the site and the geodetic elevation of the underside of the floor system of a *building* or *structure* where the District of Coldstream's land use regulations establish siting requirements related to minimum floor elevation;

10.1.4.7 the location, dimension and gradient of parking and driveway access;

10.1.4.8 the *Building Official* may waive the requirements of a site plan, in whole or in part, where the permit is sought for the repair or alteration of an existing *building or structure*.

10.1.5 include floor plans showing the dimensions and uses of all areas; the dimensions and height of crawl and roof spaces; the location, size and swing of doors; the location, size and opening of windows; floor, wall, and ceiling finishes; plumbing fixtures; structural elements; and stair dimensions;

10.1.6 include a cross section through the *building* or *structure* illustrating foundations, drainage, ceiling heights and construction systems;

10.1.7 include elevations of all sides of the *building* or *structure* showing finish details, roof slopes, windows, doors, and finished grade;

10.1.8 include cross-sectional details drawn at an appropriate scale and at sufficient locations to illustrate that the *building* or *structure* substantially conforms to the *Building Code*;

10.1.9 include copies of approvals required under any enactment relating to health or safety, including, without limitation, sewage disposal permits, highway access permits, and Ministry of Health approval;

10.1.10 include a letter of assurance in the form of Schedule "A" as referred to in Section 2.6 of Part 2 of the *Building Code*, signed by the *owner*, or a signing officer of the *owner* if the *owner* is a corporation, and the *coordinating registered professional*;

10.1.11 include letters of assurance in the form of Schedules B-1 and B-2 as referred to in Section 2.6 of Part 2 of the *Building Code*, each signed by such *registered professionals* as the *Building Official* or *Building Code* may require to prepare the *design* for and conduct *field reviews* of the construction of the *building* or *structure*;

10.1.12 include one copy of the specifications and two sets of drawings at a suitable scale of the design prepared by each registered professional and including the information set out in Articles 10.1.5 – 10.1.8 of this Bylaw.

10.2 In addition to the requirements of Section 10.1 of this Bylaw, the following may be required by a *Building Official* to be submitted with a building permit application for the construction of a *complex building* where the complexity of the proposed *building* or *structure* or siting circumstances warrant:

10.2.1 site servicing drawings, including sufficient detail of off-site services to indicate locations at the property line, prepared and sealed by a *registered professional*, in accordance with the District of Coldstream's ***Subdivision, Development and Servicing Bylaw, and as amended from time to time***;

Bylaw 1543, 2008

10.2.2 a section through the site showing grades, *buildings*, *structures*, parking areas and driveways;

10.2.3 any other information required by the *Building Official* or the *Building Code* to establish substantial compliance with this Bylaw, the *Building Code* and other bylaws and enactments relating to the *building* or *structure*.

11. Applications for Standard Buildings

11.1 An application for a building permit with respect to a *standard building* shall:

11.1.1 be made in the form prescribed by the Chief Administrative Officer or designate and signed by the *owner*, or a signing officer if the *owner* is a corporation;

110.1.2 be accompanied by the *owner's* acknowledgment of responsibility and undertakings in the from prescribed by the Chief Administrative Officer or designate signed by the *owner* or a signing officer if the *owner* is a corporation;

11.1.3 include copies of approvals required under any enactment relating to health or safety, including, without limitation, sewage disposal permits, highway access permits and Ministry of Health approval;

11.1.4 include a copy of a title search made within thirty (30) days of the date of the application;

11.1.5 include two (2) copies of a site plan prepared by a British Columbia Land Surveyor showing:

11.1.5.1 the bearing and dimensions of the parcel taken from the registered subdivision plan;

11.1.5.2 the legal description and civic address of the parcel;

11.1.5.3 the location and dimensions of all statutory rights-of-way, easements and setback requirements;

11.1.5.4 the location and dimensions of all existing and proposed *buildings* or *structures* on the parcel;

11.1.5.5 setbacks to the natural boundary of any lake, swamp, pond or watercourse where the District of Coldstream's land use regulations establish siting requirements related to flooding;

11.1.5.6 the existing and finished ground levels to an established datum at or adjacent to the site and the geodetic elevation of the underside of the floor system of a *building* or *structure* where the District of Coldstream's land use regulations establish siting requirements related to minimum floor elevation;

11.1.5.7 the location, dimension and gradient of parking and driveway access;

11.1.5.8 the *Building Official* may waive the requirements of a site plan, in whole or in part, where the permit is sought for the repair or alteration of an existing *building or structure*.

11.1.6 include one copy of specifications and two sets of drawings at a suitable scale of the design including:

11.1.6.1 floor plans showing the dimensions and uses of all areas; the dimensions and height of crawl and roof spaces; the location, size and swing of doors; the location, size and opening of windows; floor, wall, and ceiling finishes; plumbing fixtures; structural elements; and stair dimensions;

11.1.6.2 a cross section through the *building* or *structure* illustrating foundations, drainage, ceiling heights and construction systems;

11.1.6.3 elevations of all sides of the *building* or *structure* showing finish details, roof slopes, windows, doors, and finished grade; and

11.1.6.4 cross-sectional details drawn at an appropriate scale and at sufficient locations to illustrate that the *building* or *structure* substantially conforms to the *Building Code.*

11.2 In addition to the requirements of Section 11.1 of this Bylaw, the following may be required by a *Building Official* to be submitted with a building permit application for the construction of a *standard building* where complexity of the proposed *building* or *structure* or siting circumstances warrant:

11.2.1 site servicing drawings, including sufficient detail of off-site services to indicate locations at the property line, prepared and sealed by a *registered professional*;

11.2.2 a section through the site showing grades, *buildings*, *structures*, parking areas and driveways;

11.2.3 a roof plan and roof height calculations;

11.2.4 architectural, structural, electrical, mechanical or fire-suppression drawings prepared and sealed by a *registered professional*;

11.2.5 (a) certification by a *registered professional* that the plans identified by the *Building Official* are in substantial compliance with the *Building Code*; and

(b) certification by a *registered professional* that the building, or components of the building identified by the *Building Official*, will be inspected by the *registered professional*;

11.2.6 any other information required by the *Building Official* or the *Building Code* to establish substantial compliance with this Bylaw, the *Building Code* and other bylaws and enactments relating to the *building, structure, or plumbing system.*

11.3 Except as permitted in Section 11.4 of this Bylaw, all permit applications shall include a foundation design prepared by a *registered professional* in accordance with Section 4.2 of the *Building Code*, accompanied by Schedules B-1 and B-2 as required in Section 2.6 of Part 2 of the *Building Code*.

11.4 The requirements of Section 11.3 of this Bylaw may be waived by a *Building Official* where:

11.4.1 the structure is an accessory *building* with a *building area* not exceeding 55 square metres (591 sq. ft.); or

11.4.2 the structure is a mobile home conforming to the CSA standards required by the *Building Code*; or

11.4.3 the permit is for a small addition, alteration, renovation, or other construction to which a *Building Official* determines the application of Section 11.3 of this Bylaw is not warranted; or

11.4.4 the submitted foundation design substantially complies with Article 9.4.4 of Part 9 of the *Building Code* and the foundation excavation substantially complies with Section 9.12 of the *Building Code*.

12. Applications for Plumbing Permits

12.1 An application in the form prescribed by the Chief Administrative Officer or designate for a permit to construct, extend, alter, renew or repair a *plumbing system* shall include copies in duplicate of the plumbing drawings and related documents when required by the *Building Official*.

12.2 An application for a permit to construct, extend, alter, renew, or repair an automatic sprinkler system shall include copies in duplicate of the plans, specifications, and calculations when required by the *Building Official*.

13. Retaining Structures

13.1 An application for a permit for a retaining structure greater than 1.2 metres (4 feet) in height shall require a professional design and field review by a *registered professional* including the submission of letters of assurance and proof of professional liability insurance as outlined in Part 18 of this Bylaw.

14. Professional Plan Certification

14.1 The letters of assurance in the form of Schedules B-1 and B-2 referred in Section 2.6 of Part 2 of the *Building Code* and provided pursuant to Articles 10.1.11, 11.2.5, and Section 18.1 of this Bylaw are relied upon by the District of Coldstream and its *Building Officials* as certification that the design and plans to which the letters of assurance relate, comply with the *Building Code* and other applicable enactments relating to safety.

14.2 A building permit issued in circumstances where letters of assurance have been provided as described in Article 10.1.11 of this Bylaw shall include the following notice to the *owner* that the building permit is issued in reliance upon the certification of the *registered professionals* that the design and plans submitted in support of the application for the building permit comply with the *Building Code* and other applicable enactments relating to safety.

> "Take notice that the District of Coldstream, in issuing this permit has relied upon the certification of compliance of (Name) Professional Engineer or Architect, submitted with the plans of construction, that the plans comply with the current British Columbia Building Code and other applicable enactments respecting safety of the building or structure."

14.3 When a building permit is issued in accordance with Section 14.2 of this Bylaw the permit fee shall be reduced by 20% of the building permit fees payable pursuant to Appendix 1 to this Bylaw.

15. Fees and Charges

15.1 In addition to applicable fees and charges required under other bylaws and regulations, a non-refundable application fee, as set out in Appendix 1 to this Bylaw, shall be paid upon submission of any permit application under this Bylaw.

15.2 The *owner* may obtain a refund of the permit fees set out in Appendix 1 to this Bylaw, less the non-refundable application fee, when a permit is surrendered or cancelled before any construction begins.

15.3 Where, due to non-compliance with this Bylaw, more than two inspections are necessary when one inspection is normally required, for each inspection after the second inspection, a re-inspection charge as set out in Appendix 1 to this Bylaw shall be paid prior to additional inspections being performed.

16. Permit Issuance

16.1 When:

16.1.1 a completed application including all required supporting documentation has been submitted;

16.1.2 the proposed work set out in the application substantially conforms with the *Building Code*, this Bylaw and all other applicable bylaws and enactments;

16.1.3 the *owner* or his or her representative has paid all applicable fees set out in Section 15.1 of this Bylaw;

16.1.4 the *owner* or his or her representative has paid all charges and met all requirements imposed by any other statute or bylaw;

16.1.5 no covenant, agreement, or regulation of the District of Coldstream authorizes the permit to be withheld;

16.1.6 the *owner* has retained a professional engineer or geoscientist if required by the provisions of the *Engineers and Geoscientists Act* or any other enactment;

16.1.7 the *owner* has retained an architect if required by the provisions of the *Architects Act* or any other enactment;

a *Building Official* shall issue the permit for which the application is made.

16.2 When the application is in respect of a *building* that includes, or will include, a *residential occupancy*, the building permit must not be issued unless the *owner* provides evidence pursuant to Section 30(1) of the *Homeowner Protection Act*, and amendments thereto, that the proposed *building*:

16.2.1 is covered by home warranty insurance, and

16.2.2 the *constructor* is a licensed residential builder.

16.3 Section 16.2 of this Bylaw does not apply if the *owner* is not required to be licensed and to obtain home warranty insurance in accordance with Sections 20(1) or 30(1) of the *Homeowner Protection Act.*

16.4 Every permit is issued upon the condition that the permit shall expire and the rights of the *owner* under the permit shall terminate if:

16.4.1 the work authorized by the permit is not commenced within twelve (12) months from the date of issuance of the permit; or

16.4.2 work is not completed within twenty-four (24) months of issuance of the permit.

16.5 A *Building Official* may extend the period of time set out under Articles 16.4.1 and 16.4.2 where construction has not been commenced or has been discontinued due to adverse weather, strikes, material or labour shortages, or similar hardship beyond the *owner's* control.

16.6 A *Building Official* may issue a building permit for a portion of a *building* or *structure* before the design, plans and specifications for the entire *building* or *structure* have been accepted, provided sufficient information has been provided to the District of Coldstream to demonstrate to the *Building Official* that the portion authorized to be constructed substantially complies with this and other applicable Bylaws and enactments and the permit fee applicable to that portion of the *building* or *structure* has been paid. The issuance of the permit notwithstanding, the requirements of this Bylaw apply to the remainder of the *building* or *structure* as if the permit for the portion of the *building* or *structure* had not been issued.

16.7 A *Building Official* may issue a building permit to erect or place a temporary *building* or *structure,* for up to one year.

17. Disclaimer of Warranty or Representation

17.1 Neither the issuance of a permit under this Bylaw, the review and acceptance of the design, drawings, plans or specifications, nor inspections made by a *Building Official*, shall constitute a representation or warranty that the *Building Code* or the Bylaw have been complied with or the *building* or *structure* meets any standard of materials or workmanship, and no person shall rely on any of those acts as establishing compliance with the *Building Code* or this Bylaw or any standard of construction.

18. Professional Design and Field Review

18.1 When a *Building Official* considers that the site conditions, size or complexity of a development or an aspect of a development warrant, he or she may require a *registered professional* to:

18.1.1 certify that the design and plans are in compliance with the *Building Code;* and

18.1.2 inspect the constructed development, or components of the constructed development identified by the *Building Official* and certify that the development or component of the development is in substantial compliance with the plans submitted with the building permit application.

18.2 Prior to the issuance of a final inspection notice for a *complex building* or a *simple building* where letters of assurance have been required under Article 11.2.5 or Section 18.1 of this Bylaw, the *owner* shall provide the District of Coldstream with letters of assurance in the form of Schedules C-A or C-B, as is appropriate, referred to in Section 2.6 of Part 2 of the *Building Code*.

18.3 When a *registered professional* provides letters of assurance in accordance with Article 10.1.11 and Section 18.2 of this Bylaw, or inspects and certifies compliance in accordance with the Article 11.2.5 and Section 18.1 of this Bylaw, he or she shall also provide proof of liability insurance to the *Building Official* in the form of Appendix 2 to this Bylaw.

19. Responsibilities of the Owner

19.1 Every *owner* shall ensure that all construction complies with the *Building Code*, this Bylaw and other applicable enactments respecting safety.

19.2 Every *owner* to whom a permit is issued shall be responsible for the cost of repair of any damage to municipal works that occurs in the course of the work authorized by the permit.

19.3 Every *owner* to whom a permit is issued shall, during construction:

19.3.1 post and maintain the permit in a conspicuous place on the property in respect of which the permit was issued;

19.3.2 keep a copy of the accepted designs, plans and specifications on the property; and

19.3.3 post the civic address on the property in a location visible from any adjoining streets.

20. Inspections

20.1 When a *registered professional* provides letters of assurance in accordance with Articles 10.1.11, 11.2.5, Sections 18.1 or 18.2 of this Bylaw, the District of Coldstream will rely solely on *field reviews* undertaken by the *registered professional* and the letters of assurance submitted pursuant to Section 18.2 of this Bylaw as assurance that the construction substantially conforms to the design and that the construction substantially complies with the *Building Code,* this Bylaw, and other applicable enactments respecting safety and a *Building Official* may attend at a construction site from time to time to determine whether field reviews are occurring and to monitor them.

20.2 A *Building Official* may attend periodically at the site of the construction of *standard buildings* and *structures* to ascertain whether the *health and safety aspects of the work* are being carried out in substantial conformance with the those portions of the *Building Code*, this Bylaw and any other applicable enactment concerning safety.

20.3 The *owner*, or his or her representative, shall give at least twenty-four (24) hours' notice to the District of Coldstream when requesting an inspection and shall obtain an inspection and receive a *Building Official's* acceptance of the following aspects of the work in *standard buildings* or *structures* prior to concealing them at the following stages of construction:\

20.3.1 when the footing and/or foundation wall forms are complete but prior to the placing of any concrete;

20.3.2 when the installation of the perimeter drain tile and damp-proofing is complete but prior to backfilling;

20.3.3 when the building sewer, sanitary building sewer, storm building sewer or water service pipe is installed but prior to backfilling;

20.3.4 when the *plumbing system* or part thereof is complete but prior to covering;

20.3.5 when the framing, sheathing, fire stopping, bracing, plumbing, are complete but before any insulation or exterior finish is applied;

20.3.6 when rough-in of masonry fireplaces, solid-fuel burning appliances, and factory-built chimneys is complete;

20.3.7 when the insulation and air/vapour barrier are complete but prior to the installation of any interior finish which would conceal such work;

20.3.8 when the building or structure is substantially complete but prior to any occupancy;

20.3.9 when any deficiencies noted on a previous inspection are rectified but before any interior or exterior finish is applied which would conceal such work; and

20.3.10 when otherwise required by the *Building Official.*

20.4 When required by the *Building Official,* every *owner* shall uncover and replace at his or her own expense any work that has been covered prior to inspection or contrary to an order issued by the *Building Official.*

20.5 For the purpose of verifying setback requirements prior to placement of concrete in footings or walls, every *owner* shall provide proof of property boundaries. A survey plot plan prepared by a British Columbia Land Surveyor specifying the location of any buildings or structures shall be provided unless deemed unnecessary by the *Building Official.*

20.6 The requirements of Section 20.3 of this Bylaw do not apply to any aspect of the work that is the subject of a *registered professional's* letter of assurance provided in accordance with Articles 10.1.11, 11.2.5 or Sections 18.1 and 18.2 of this Bylaw.

21. Final Inspection Notice

21.1 No person shall occupy a *building* or *structure* or part of a *building* or *structure* until a final inspection has been carried out or approval in writing has been received from the *Building Official.*

21.2 A final inspection notice shall not be issued until:

21.2.1 all letters of assurance have been submitted when required in accordance with Articles 10.1.10, 10.1.11 and 11.2.5 and Sections 18.1 and 18.2 of this Bylaw; and

21.2.2 all aspects of the work requiring inspection and an acceptance pursuant to Section 20.3 of this Bylaw have been inspected and accepted or the inspections and acceptance are not required in accordance with Section 20.6 of this Bylaw.

21.3 A *Building Official* may issue a final inspection notice for part of a *building* or *structure* when that part of the *building* or *structure* is self-contained, provided with essential services and meets requirements set out in Section 21.2 of this Bylaw.

22. Climate Data

Area	Design Temperature				Degree Days Below 18°C	15 Min. Rain mm	One Day Rain mm	Ann. Tot. Ppn. mm	Ground Snow Load kPa		Hourly Wind Pressures		
	January		July 2.5%										
	2.5% °C	1% °C	Dry °C	Wet °C					S_S	S_R	1/10 kPa	1/30 kPa	1/100 kPa
Coldstream	-20	-23	33	20	3887	13	40	381	2.0	0.1	0.45	0.39	0.49
Lavington	""	""	""	""	""	""	""	""	2.4	0.1	""	"'	"'

23. Penalties and Enforcement

23.1 Every person who contravenes any provision of this Bylaw commits an offense punishable on summary conviction and shall be liable to a fine of not more than $10,000.00 (Ten Thousand Dollars) or to imprisonment for not more than six (6) months.

23.2 Every person who fails to comply with any order or notice issued by a *Building Official,* or who allows a violation of this Bylaw to continue, contravenes this Bylaw.

23.3 A *Building Official* may order the cessation of any work that is proceeding in contravention of the *Building Code* or this Bylaw by posting a Stop Work notice in the form prescribed by the Chief Administrative Officer or designate.

23.4 The *owner* of property on which a Stop Work notice has been posted, and every person, shall cease all construction work immediately and shall not do any work until all applicable provisions of this Bylaw have been substantially complied with and the Stop Work notice has been rescinded by a *Building Official* in writing.

23.5 The *Building Official* may withhold or cancel a permit after written notice is given to the *owner* that:

23.5.1 there is a contravention of any condition under which the permit was issued;

23.5.2 the permit was issued in error; or

23.5.3 the permit was issued on the basis of incorrect information.

23.6 Every person who commences work requiring a building permit without first obtaining such a permit shall pay double the value of the permit fee, to a maximum of $500.00, in addition to the permit fee.

24. Severability

24.1 The provisions of this Bylaw are severable and the invalidity of any part of this Bylaw shall not affect the validity of the remainder of this Bylaw.

25. Appendices

25.1 The following Appendices are attached to and form part of this Bylaw:

Appendix 1 - Permit Fees
Appendix 2 - Report on Professional Insurance
Appendix 3 - Swimming Pool Regulations

26. This Bylaw shall come into force on January 1, 2005.

READ a first time this 22nd day of November 2004

READ a second time this 22nd day of November 2004

READ a third time this 22nd day of November 2004

FINALLY PASSED AND ADOPTED this 6th day of December 2004

_____ _____

Director of Corporate Administration Mayor

Appendices 1, 2 and 3

THE DISTRICT OF COLDSTREAM
BUILDING INSPECTION DEPARTMENT

PERMIT FEES

			$
1.	Building Permit Application Fees – Non-Refundable		
	(a)	Construction Value **$5,000*** or less	50.00
	(b)	Construction Value over **$5,000*** up to $250,000	100.00
	(c)	Construction Value $250,000 and more	150.00

(*Bylaw 1454,2005)

2.	Building Permit Fees		
	(a)	For the first $1,000 of Construction Value	55.00
	(b)	For each $1,000 of Construction Value or part thereof:	
		(i) up to $500,000	12.00
		(ii) from $500,001 to $1,000,000	11.00
		(iii) exceeding $1,000,000	10.00
	(c)	For the first five Plumbing Fixtures	55.00
	(d)	For each Plumbing Fixture over the first five	12.00
	(e)	For installing a Manufactured Home (mobile home)	230.00
3.	Demolition / Moving Permit Fees		
	(a)	Application for a Demolition / Moving Permit (non-refundable)	50.00
	(b)	Demolition / Moving Permit	210.00
	(c)	Demolition / Moving Deposit	2,100.00
4.	Other Fees and Charges		
	(a)	Special Inspection or Re-Inspection	100.00
	(b)	Provisional Occupancy Permit with Re-Inspection	100.00
	(c)	Administrative Charge to report on a 'Notice on Title'	160.00
	(d)	New products, systems or methods Evaluation Fee	2,100.00

Where work has commenced before an application has been made for a permit, the permit fee shall be doubled to a maximum of $500.00 (see Section 23.6 of this Bylaw).

THE DISTRICT OF COLDSTREAM
BUILDING INSPECTION DEPARTMENT

REPORT ON PROFESSIONAL INSURANCE

File No. _____

PROJECT:

Described as: _____

Legal description: _____
(Lot #, Plan #, Section #, etc.)

Street Address: _____

REGISTERED PROFESSIONAL:

Pursuant to the "District of Coldstream Building and Plumbing Bylaw No. 1442, 2004" the undersigned hereby gives assurance that:

1. I have fulfilled my obligation to obtain professional liability or errors and omissions insurance as outlined in Bylaw No. 1442, 2004.

2. I have attached a copy of my certificate of insurance indicating the particulars of such coverage.

3. I am a registered professional as defined by Section 1.1.3.2 of the *BC Building Code*.

4. I will notify the Building Official immediately if this insurance coverage is reduced or terminated at any time during the construction of the above-noted project.

Name: _____

Company: _____

Mailing Address: _____

_____ Postal Code

Phone: (home) _____ Phone: (work) _____

Email: _____

Signature: _____ Date: _____

THE DISTRICT OF COLDSTREAM
BUILDING INSPECTION DEPARTMENT

SWIMMING POOL REGULATIONS

1. A building permit is required for a swimming pool prior to its installation or construction. Every application for a building permit for a pool shall be accompanied with a plan showing the location and dimensions of the proposed pool and the location of all buildings on the site.

2. Every swimming pool, hot tub, spa, fish pond, wading or lap pool shall be surrounded by a fence, building or other structure, no less than 1.2 metres (4 feet) in height above grade. The fence shall be constructed in such a manner as to render the pool, spa or pond secure from unauthorized entry. The fence shall have no openings greater than 100 mm (4 inches) between grade and the top of the fence and shall be built so that no attachment between 100 mm and 900 mm (between 4 inches and 35 inches) will facilitate climbing. All access to a pool, spa or pond shall be operated by a self-closing mechanism and latch mounted on the pool side of each access through the fence, building or other structure, a minimum of 1 metre (3.25 feet) above grade.

3. A spa or hot tub may be covered with a locking cover which is designed to prevent unauthorized access to the water in lieu of a fence.

4. It is the responsibility of each owner or occupier of property on or in which a pool is located, to maintain every fence required under item 2. above in good order. All sagging gates, loose parts, torn mesh, missing materials, worn latches, locks, or broken or binding members shall be promptly replaced or repaired.

5. Setbacks shall be in accordance with the District of Coldstream Zoning Bylaw No. 1382, as amended or re-enacted from time to time.

6. Pressure-reducing valves and a backflow prevention device shall be installed in accordance with the requirements of the *Building Code*.

BRITISH COLUMBIA

BUILDING CODE

2006

Introduction

The British Columbia Building Code (BCBC) sets out technical provisions for the design and construction of new buildings. It also applies to the alteration, change of use and demolition of existing buildings. Code users should consult the authority having jurisdiction regarding application of BCBC provisions to existing buildings.

The BC Building Code is a regulation of the Local Government Act and is based on the model National Building Code of Canada 2005 and the model National Plumbing Code of Canada. Building code users are involved in the development of the BCBC and they help determine the content. The 2006 BCBC succeeds the 1998 British Columbia Building Code.

The BCBC addresses the following four broad objectives:

- safety
- health
- accessibility for persons with disabilities
- fire protection of buildings and facilities

The BCBC is not a textbook on the design or construction of buildings and facilities, nor is it the only document regulating health and safety. Designing and building in a technically sound manner depends upon many factors beyond simple compliance with building regulations. Such factors include the availability of knowledgeable practitioners who have received appropriate education, training and experience and have some degree of familiarity with the principles of good practice and experience using textbooks, reference manuals and technical guides.

The BCBC does not list any proprietary products. It establishes the criteria that materials, products and assemblies must meet. Some of these criteria are explicitly stated in the BCBC while others are incorporated by reference to material or product standards published by standards development organizations.

This volume contains information pertinent to 2006 BC Building Code Division B Part 7, Plumbing Services. It has been prepared for the convenience of some BC Building Code users. Code users wishing to consult portions not contained in this volume should consult www.bccodes.ca.

Guidelines for requesting changes to the BCBC are available on the Internet at www.housing.gov.bc.ca/building. Printed copies of the guidelines may also be requested from the Building Policy Branch, whose address is provided at the end of this Introduction.

Relationship between the BC Building Code and the BC Fire Code

The BC Building Code (BCBC) and BC Fire Code (BCFC) each contain provisions that deal with the safety of persons in buildings in the event of a fire and the protection of buildings from the effects of fire. The BCFC also applies to other types of facilities besides buildings (e.g. tank farms and storage yards).

These codes are developed as complementary and coordinated documents to minimize the possibility of their containing conflicting provisions. It is expected that buildings comply with both the BCBC and the BCFC. The BCBC generally applies at the time of construction and reconstruction while the BCFC applies to the operation and maintenance of the fire-related features of buildings in use.

The scope of each of these Codes with respect to fire safety and fire protection can be summarized as follows:

The BC Building Code covers the fire safety and fire protection features that are

- required to be incorporated in a building at the time of its original construction. Building codes typically no longer apply once a building is occupied, unless the building is undergoing alteration or change of use, or being demolished.

The BC Fire Code includes provisions for:

- the on-going maintenance and use of the fire safety and fire protection features incorporated in buildings
- the conduct of activities that might cause fire hazards in and around buildings
- limitations on hazardous contents in and around buildings
- the establishment of fire safety plans
- fire safety at construction and demolition sites

In addition, the BCFC contains provisions regarding fire safety and fire protection features that must be added to existing buildings when certain hazardous activities or processes are introduced in these buildings.

Some of the BCFC's provisions are not duplicated directly in the BCBC but are in fact adopted through cross-references to the BCFC. Thus, some BCFC provisions may apply to original construction, alterations, or changes in use.

Objective-Based Code Format

The BC Building Code (BCBC) is published in an objective-based format for the first time in the 2006 edition. The objective-based format organizes the BCBC into three Divisions:

- Division A, which defines the scope of the Code and contains the objectives, the functional statements and the conditions necessary to achieve compliance;
- Division B, which contains acceptable solutions (formerly referred to as "technical requirements") deemed to satisfy the objectives and functional statements listed in Division A. Most of these are carried forward from the 1998 BCBC; and
- Division C, which contains administrative provisions.

In the 2006 BCBC, Division B provisions are linked to:

- one or more objectives (safety, health, accessibility for persons with disabilities, fire and structural protection of buildings), and
- one or more functional statements (statements on the functions of the building that a particular provision helps to achieve).

In addition, with the electronic version of the Code, each provision is linked to two new types of explanatory material:

- intent statements (detailed statements on the specific intent of the provision), and
- application statements (detailed statements on what the provision applies to).

Previous explanatory material found in Appendices continues to be provided.

A complete description of the objective-based code structure is available on the Building Policy Branch website (www.housing.gov.bc.ca/building).

Additional Information

Numbering System

A consistent numbering system has been used throughout the BC Building Code. The first number indicates the Part of the Code; the second, the Section in the Part; the third, the Subsection; and the fourth, the Article in the Subsection. The detailed provisions are found at the Sentence level (indicated by numbers in brackets), and Sentences may be broken down into Clauses and Subclauses. This structure is illustrated as follows:

3	Part
3.5.	Section

3.5.2.	Subsection
3.5.2.1.	Article
3.5.2.1.(2)	Sentence
3.5.2.1.(2)(a)	Clause
3.5.2.1.(2)(a)(i)	Subclause

Change Indication

Technical changes or additions relative to the 1998 edition of the BC Building Code are enclosed by angle brackets. In the printed version of the BC Building Code, change indicators have not been provided within tables and figures.

Code users wishing to identify specific changes within tables, figures or Part 4 should consult electronic versions of the BC Building Code, in which changes are indicated by a green underline.

No change indication is provided for renumbered or deleted provisions.

Online information

Additional information relating to the BC Building Code is available on the Building Policy Branch website at www.housing.gov.bc.ca/building. Online information includes:

- a list of BC building regulations, and the dates at which they were updated
- the Water Conservation Plumbing Regulation
- a list of 2006 BC Building Code provisions that have changed from the 1998 edition of the BC Building Code
- Concurrent authority provisions of the Community Charter that apply to technical building standards.

Metric Conversion

All values in the BCBC are given in metric units. A conversion table of imperial equivalents for the most common units used in building design and construction is located at the end of the Code.

Commercial Rights to Reproduce the BC Building Code

Request for permission to reproduce the BC Building Code must be sent to ipp@mail.qp.gov.bc.ca, or to the following address:

Intellectual Property Program
PO Box 9492 Stn Prov Govt
Victoria BC V8W 9N7
Phone: (250) 356-5055
Fax: (250) 356-0846

Contact Information

The provincial government welcomes comments and suggestions for improvements to the BC Building Code.

Persons interested in requesting a change to a technical provision of the BCBC, or proposing a new provision, should refer to www.housing.gov.bc.ca/building, where additional information is available.

Comments, suggestions and requests for printed copies of web site material referred to in this introduction should be sent to:

Building Policy Branch
Office of Housing and Construction Standards
609 Broughton Street
PO Box 9844 Stn Prov Govt
Victoria BC V8W 9T2
Email: Building.Policy@gov.bc.ca

Persons interested in the development of the National Building Code and the National Plumbing Code, the model documents for the British Columbia Building Code can contact:

The Secretary
Canadian Commission on Building and Fire Codes
Institute for Research in Construction
National Research Council of Canada
Ottawa, Ontario K1A 0R6

On the Internet at www.nationalcodes.ca

Division A
Compliance, Objectives and Functional Statements

Part 1 — Compliance

Section 1.1. General

1.1.1. APPLICATION OF THIS CODE

1.1.1.1. Application of this Code

1) This Code applies to any one or more of the following:

a) the design and construction of a new *building*,

b) the *occupancy* of any *building*,

c) the change in *occupancy* of any *building*,

d) an *alteration* of any *building*,

e) an addition to any *building*,

f) the demolition of any *building*,

g) the reconstruction of any *building* that has been damaged by fire, earthquake or other cause,

h) the correction of an *unsafe condition* in or about any *building*,

i) all parts of any *building* affected by a change in *occupancy*,

j) the work necessary to ensure safety in parts of a *building*

i) that remain after a demolition,

ii) that are affected by, but that are not directly involved in *alterations*, or

iii) that are affected by, but not directly involved in additions,

k) except as permitted by the British Columbia Fire Code Regulation, the installation, replacement, or *alteration* of materials or equipment regulated by this Code,

l) the work necessary to ensure safety in a relocated *building* during and after relocation,

m) safety during construction of a *building*, including protection of the public,

n) the design, installation, extension, *alteration*, renewal or repair of *plumbing systems*, and

o) the *alteration*, rehabilitation and change of *occupancy* of heritage *buildings*.

[Rev. 8, B.C. Reg. 45/2010.]

2) This Code does not apply to:

a) *sewage*, water, electrical, telephone, rail or similar public infrastructure systems located in a *street* or a public transit right of way,

b) utility towers and poles, television and radio or other communication aerials and towers, except for

loads resulting from those located on or attached to *buildings*,

c) mechanical or other equipment and *appliances* not specifically regulated in these regulations,

d) flood control and hydro electric dams and structures,

e) accessory *buildings* less than 10 m^2 in *building area* that do not create a hazard,

f) temporary *buildings* such as construction site offices, seasonal storage *buildings*, special events facilities, emergency facilities, and such similar structures as authorized by the authority having jurisdiction,

g) factory built housing and components certified by a Standards Council of Canada accredited agency, prior to placement on the site, as complying with Canadian Standards Association Standard A277, "Procedure for Certification of Factory Built Houses," or CAN/CSA-Z240 MH Series, "Mobile Homes," but this exemption does not extend to on site preparations (*foundations*, *basements*, mountings), interconnection of modules, connection to services and installation of *appliances*, and

h) those areas that are specifically exempted from provincial *building* regulations or by federal statutes or regulations.

3) This Code applies both to site-assembled and factory-built *buildings*. (See Appendix A.)

4) *Farm buildings* shall conform to the requirements in the National Farm Building Code of Canada 1995.

5) The Alternate Compliance Methods for Heritage Buildings in Table A-1.1.1.1. in Appendix A may be substituted for requirements contained elsewhere in this Code.

NBC

1.1.1.2. Application to Existing Buildings

1) Where a *building* is altered, rehabilitated, renovated or repaired, or there is a change in *occupancy*, the level of life safety and *building* performance shall not be decreased below a level that already exists. (See Appendix A.)

1.1.1.3. Responsibility of Owner

1) Neither the granting of a *building* permit nor the approval of the relevant drawings and specifications nor inspections made by the *authority having jurisdiction* shall in any way relieve the *owner* of such *building* from full responsibility for carrying out the work or having the work carried out in full accordance with the requirements of the British Columbia Building Code.

Section 1.4. Terms and Abbreviations

1.4.1. DEFINITIONS OF WORDS AND PHRASES

1.4.1.1. Non-defined Terms

1) Words and phrases used in this Code that are not included in the list of definitions in Article 1.4.1.2. shall have the meanings that are commonly assigned to them in the context in which they are used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies.

2) Where objectives and functional statements are referred to in this Code, they shall be the objectives and functional statements described in Parts 2 and 3.

3) Where acceptable solutions are referred to in this Code, they shall be the provisions stated in Parts 3 to 9 of Division B.

4) Where alternative solutions are referred to in this Code, they shall be the alternative solutions mentioned in Clause 1.2.1.1.(1)(b).

1.4.1.2. Defined Terms

1) The words and terms in italics in this Code have the following meanings:

Access or ***accessible*** means that a *person with disabilities* is, without assistance, able to approach, enter, pass to and from, and make use of an area and its *facilities*, or either of them.

Access to exit means that part of a *means of egress* within a *floor area* that provides *access* to an *exit* serving the *floor area*.

Adaptable dwelling unit means a *dwelling unit* designed and constructed to facilitate future modification to provide access for *persons with disabilities*.

[Rev. 6, B.C. Reg. 221/2009.]

Additional circuit vent means a *vent pipe* that is installed between a *circuit vent* and a *relief vent* to provide additional air circulation.

Adfreezing means the adhesion of *soil* to a *foundation unit* resulting from the freezing of *soil* water. (Also referred to as "frost grip".)

Air admittance valve means a one way valve designed to allow air to enter the *drainage system* when the pressure in the *plumbing system* is less than atmospheric pressure. (See Appendix Note A-7.2.10.16.(1) of Division B.)

Air barrier system means the assembly installed to provide a continuous barrier to the movement of air.

Air break means the unobstructed vertical distance between the lowest point of an *indirectly connected soil-or-waste pipe* and the *flood level rim* of the *fixture* into which it discharges. (See Appendix Note A-7.3.3.11.(2) in Division B.)

Air gap means the unobstructed vertical distance through air between the lowest point of a water supply outlet and the *flood level rim* of the *fixture* or device into which the outlet discharges. (See Appendix Note A-7.6.2.9.(2) in Division B.)

Air-supported structure means a structure consisting of a pliable membrane which achieves and maintains its shape and support by internal air pressure.

Alarm signal means an audible signal transmitted throughout a zone or zones or throughout a *building* to advise occupants that a fire emergency exists.

Alert signal means an audible signal to advise designated persons of a fire emergency.

Alloyed zinc means an alloy of zinc having the corrosion resistance and physical properties of an alloy containing 0.15% titanium, 0.74% copper and 99.11% zinc, and so tempered as to be capable of being formed into the shape required for a watertight joint.

Alteration means a change or extension to any matter or thing or to any *occupancy* regulated by this Code.

Appliance means a device to convert fuel into energy and includes all components, controls, wiring and piping required to be part of the device by the applicable standard referred to in this Code.

Artesian groundwater means a confined body of water under pressure in the ground.

Assembly occupancy means the *occupancy* or the use of a *building*, or part thereof, by a gathering of persons for civic, political, travel, religious, social, educational, recreational or like purposes, or for the consumption of food or drink.

Attic or roof space means the space between the roof and the ceiling of the top *storey* or between a dwarf wall and a sloping roof.

Authority having jurisdiction means the governmental body responsible for the enforcement of any part of this Code or the official or agency designated by that body to exercise such a function. Notwithstanding this definition, the Chief Inspector of Mines has the sole responsibility for administration and enforcement in respect to all *buildings*, structures and site services used at a mine, as defined in the Mines Act.

Auxiliary water supply means any water supply on or available to the premises other than the primary *potable* water supply. (See Appendix A.)

Backflow means a flowing back or reversal of the normal direction of the flow.

Backflow preventer means a device or a method that prevents *backflow*. (See Figure A-1.4.1.2.(1)-A in Appendix A.)

Back pressure means pressure higher than the supply pressure.

Back-siphonage means *backflow* caused by a negative pressure in the supply system. (See Figure A-1.4.1.2.(1)-B in Appendix A.)

Back-siphonage preventer (or *vacuum breaker*) means a device or a method that prevents *back-*

siphonage. (See Figure A-1.4.1.2.(1)-C in Appendix A.)

Backwater valve means a *check valve* designed for use in a gravity *drainage system*.

Basement means a *storey* or *storeys* of a *building* located below the first *storey*.

Bathroom group means a group of plumbing *fixtures* installed in the same room, consisting of one domestic-type lavatory, one water closet and either one bathtub (with or without a shower) or one one-head shower.

Bearing surface means the contact surface between a *foundation unit* and the *soil* or *rock* upon which it bears.

Boiler means an *appliance* intended to supply hot water or steam for space heating, processing or power purposes.

Branch means a *soil-or-waste pipe* connected at its upstream end to the junction of 2 or more *soil-or-waste pipes* or to a *soil-or-waste stack*, and connected at its downstream end to another *branch*, a sump, a *soil-or-waste stack* or a *building drain*. (See Figure A-1.4.1.2.(1)-F in Appendix A.)

Branch vent means a *vent pipe* that is connected at its lower end to the junction of 2 or more *vent pipes*, and at its upper end, either to another *branch vent* or to a *stack vent*, *vent stack* or header, or terminates in open air. (See Figure A-1.4.1.2.(1)-D in Appendix A.)

Breeching means a *flue pipe* or chamber for receiving *flue* gases from one or more *flue* connections and for discharging these gases through a single *flue* connection.

Building means any structure used or intended for supporting or sheltering any use or *occupancy*.

Building area means the greatest horizontal area of a *building* above *grade* within the outside surface of exterior walls or within the outside surface of exterior walls and the centre line of *firewalls*.

Building drain means the lowest horizontal piping, including any vertical offset, that conducts *sewage*, *clear-water waste* or *storm water* by gravity to a *building sewer*. (See Figure A-1.4.1.2.(1)-F in Appendix A.)

Building height (in *storeys*) means the number of *storeys* contained between the roof and the floor of the first *storey*.

Building of new construction means a new *building* constructed as a separate entity, or an addition to an existing *building* where the addition has no internal pedestrian connection with the existing *building*. (See Subsection 3.8.4.)

Building sewer means a pipe that is connected to a *building drain* 1 m outside a wall of a *building* and that leads to a public sewer or *private sewage disposal system*.

Building trap means a *trap* that is installed in a *building drain* or *building sewer* to prevent circulation of air between a *drainage system* and a public sewer. (See Appendix Note A-7.4.5.4.(1) in Division B.)

Business and personal services occupancy means the *occupancy* or use of a *building* or part thereof

for the transaction of business or the rendering or receiving of professional or personal services.

Caisson (See *Pile*).

Care or detention occupancy means the *occupancy* or use of a *building* or part thereof by persons who require special care or treatment because of cognitive or physical limitations or by persons who are restrained from, or are incapable of, self preservation because of security measures not under their control.

Cavity wall means a construction of masonry units laid with a cavity between the wythes. The wythes are tied together with metal ties or bonding units, and are relied on to act together in resisting lateral loads.

Check valve means a valve that permits flow in one direction but prevents a return flow.

Chimney means a primarily vertical shaft enclosing at least one *flue* for conducting *flue* gases to the outdoors.

Chimney liner means a conduit containing a *chimney flue* used as a lining of a *masonry or concrete chimney*.

Circuit vent means a *vent pipe* that serves a number of *fixtures* and connects to the *fixture drain* of the most upstream *fixture*.

Class 1 fire sprinkler/standpipe system means an assembly of pipes and fittings that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets, is *directly connected* to the public water supply main only, has no pumps or reservoirs, and in which the sprinkler drains discharge to the atmosphere, to dry wells or to other safe outlets.

Class 2 fire sprinkler/standpipe system means *Class 1 fire sprinkler/standpipe system* that includes a booster pump in its connection to the public water supply main.

Class 3 fire sprinkler/standpipe system means an assembly of pipes and fittings that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets, is *directly connected* to the public water supply main as well as to one or more of the following storage facilities, which are filled from the public water supply main only: elevated water storage, fire pumps supplying water from above aboveground covered reservoirs, or pressure tanks. The water in this sprinkler/standpipe system must be maintained in *potable* condition. (See Appendix A.)

Class 4 fire sprinkler/standpipe system means an assembly of pipes and fittings that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets and is *directly connected* to the public water supply main (similar to *Class 1* and *Class 2 fire sprinkler/standpipe systems*) and to an *auxiliary water supply* dedicated to fire department use that is located within 520 m of a pumper connection.

Class 5 fire sprinkler/standpipe system means an assembly of pipes and fittings that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets and is *directly connected* to the public water supply main and also interconnected with an *auxiliary water supply*.

Class 6 fire sprinkler/standpipe system means an assembly of pipes and fittings that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets and acts as a combined

industrial water supply and fire protection system supplied from the public water supply main only, with or without gravity storage or pump suction tanks.

Cleanout means an *access* provided in *drainage* and *venting systems* to provide for cleaning and inspection services.

Clear-water waste means waste water with impurity levels that will not be harmful to health and may include cooling water and condensate drainage from refrigeration and air conditioning equipment and cooled condensate from steam heating systems, but does not include *storm water*. (See Appendix A.)

Closure means a device or assembly for closing an opening through a *fire separation* or an exterior wall, such as a door, a shutter, wired glass or glass block, and includes all components such as hardware, closing devices, frames and anchors.

Combined building drain means a building drain that is intended to conduct *sewage* and *storm water*.

Combined building sewer means a building sewer that is intended to conduct *sewage* and *storm water*.

Combined sewer means a sewer that is intended to conduct *sewage* and *storm water*.

Combustible means that a material fails to meet the acceptance criteria of CAN4-S114, “Determination of Non-Combustibility in Building Materials.”

Combustible construction means that type of construction that does not meet the requirements for *noncombustible construction*.

Combustible liquid means a liquid having a *flash point* at or above 37.8°C and below 93.3°C.

Conditioned space means any space within a *building* the temperature of which is controlled to limit variation in response to the exterior ambient temperature by the provision, either directly or indirectly, of heating or cooling over substantial portions of the year.

Constructor means a person who contracts with an *owner* or his authorized agent to undertake a project, and includes an *owner* who contracts with more than one person for the work on a project or undertakes the work on a project or any part thereof.

Contained use area means a supervised area containing one or more rooms in which occupant movement is restricted to a single room by security measures not under the control of the occupant.

Continuous vent means a *vent pipe* that is an extension of a vertical section of a *branch* or *fixture drain*. (See Figure A-1.4.1.2.(1)-E in Appendix A.)

Coordinating registered professional means a *registered professional* retained pursuant to Clause 2.2.7.2.(1)(a) of Division C to coordinate all design work and *field reviews* of the *registered professionals* required for the project.

Critical level means the level of submergence at which the *back-siphonage preventer* ceases to prevent *back-siphonage*.

Dead end means a pipe that terminates with a closed fitting.

Dead load means the weight of all permanent structural and non-structural components of a *building*.

Deep foundation means a *foundation unit* that provides support for a *building* by transferring loads either by end-bearing to a *soil* or *rock* at considerable depth below the *building*, or by adhesion or friction, or both, in the *soil* or *rock* in which it is placed. *Piles* are the most common type of *deep foundation*.

Designer means the person responsible for the design.

Developed length means the length along the centre line of the pipe and fittings. (See Appendix Note A-7.5.6.3.(1) in Division B.)

Direct-vented (as applied to a fuel-fired space- or water-heating *appliance*) means an *appliance* and its *venting system* in which all the combustion air is supplied directly from the outdoors and products of combustion are vented directly to the outdoors via independent, totally enclosed passageways connected directly to the *appliance*.

Directly connected means physically connected in such a way that water or gas cannot escape from the connection.

Drainage system means an assembly of pipes, fittings, *fixtures*, *traps* and appurtenances that is used to convey *sewage*, *clear-water waste* or *storm water* to a public sewer or a *private sewage disposal system*, but does not include *subsoil drainage pipes*. (See Figure A-1.4.1.2.(1)-F in Appendix A.)

Dual vent means a *vent pipe* that serves 2 *fixtures* and connects at the junction of the *trap arms*. (See Figure A-1.4.1.2.(1)-G in Appendix A.)

Dwelling unit means a *suite* operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities.

Emergency floor drain means a *fixture* for the purpose of overflow protection that does not receive regular discharge from other *fixtures*, other than from a *trap* primer. (See Appendix A.)

Excavation means the space created by the removal of *soil*, *rock* or *fill* for the purposes of construction.

Exhaust duct means a duct through which air is conveyed from a room or space to the outdoors.

Exit means that part of a *means of egress*, including doorways, that leads from the *floor area* it serves, to a separate *building*, an open public thoroughfare, or an exterior open space protected from fire exposure from the *building* and having *access* to an open public thoroughfare. (See Appendix A.)

Exit level means the level of an *exit* stairway at which an exterior *exit* door or *exit* passageway leads to the exterior.

Exit storey (as applying to Subsection 3.2.6. of Division B) means a *storey* having an exterior *exit* door.

Exposing building face means that part of the exterior wall of a *building* which faces one direction and

is located between ground level and the ceiling of its top *storey* or, where a *building* is divided into *fire compartments*, the exterior wall of a *fire compartment* which faces one direction.

Facility means something that is built, installed, or provided to serve a particular purpose.

Factory-built chimney means a *chimney* consisting entirely of factory-made parts, each designed to be assembled with the other without requiring fabrication on site.

Farm building means a *building* or part thereof which does not contain a *residential occupancy* and which is associated with and located on land devoted to the practice of farming, and used essentially for the housing of equipment or livestock, or the production, storage or processing of agricultural and horticultural produce or feeds. (See Appendix A.)

Field review means a review of the work

a) at a project site of a development to which a *building* permit relates, and

b) where applicable, at fabrication locations where *building* components are fabricated for use at the project site

that a *registered professional* in his or her professional discretion considers necessary to ascertain whether the work substantially complies in all material respects with the plans and supporting documents prepared by the *registered professional* for which the *building* permit is issued.

Fill means *soil*, *rock*, rubble, industrial waste such as slag, organic material or a combination of these that is transported and placed on the natural surface of a *soil* or *rock* or organic terrain. It may or may not be compacted.

Fire compartment means an enclosed space in a *building* that is separated from all other parts of the *building* by enclosing construction providing a *fire separation* having a required *fire-resistance rating*.

Fire damper means a *closure* which consists of a damper installed in an air distribution system or in a wall or floor assembly, which is normally held open but is designed to close automatically in the event of a fire in order to maintain the integrity of the *fire separation*.

Fire detector means a device which detects a fire condition and automatically initiates an electrical signal to actuate an *alert signal* or *alarm signal* and includes *heat detectors* and *smoke detectors*.

Fire load (as applying to an *occupancy*) means the *combustible* contents of a room or *floor area* expressed in terms of the average weight of *combustible* materials per unit area, from which the potential heat liberation may be calculated based on the calorific value of the materials, and includes the furnishings, finished floor, wall and ceiling finishes, trim and temporary and movable *partitions*.

Fire-protection rating means the time in minutes or hours that a *closure* will withstand the passage of flame when exposed to fire under specified conditions of test and performance criteria, or as otherwise prescribed in this Code.

Fire-resistance rating means the time in minutes or hours that a material or assembly of materials will withstand the passage of flame and the transmission of heat when exposed to fire under specified conditions of test and performance criteria, or as determined by extension or interpretation of information derived there from as prescribed in this Code. (See Appendix Note D-1.2.1.(2) of Division B.)

Fire-retardant treated wood means wood or a wood product that has had its surface-burning characteristics, such as flame spread, rate of fuel contribution and density of smoke developed, reduced by impregnation with fire-retardant chemicals.

Fire separation means a construction assembly that acts as a barrier against the spread of fire. (See Appendix A.)

Fire service pipe means a pipe that conveys water from a public water main or private water source to the inside of a *building* for the purpose of supplying the fire sprinkler or standpipe system.

Fire stop flap means a device intended for use in horizontal assemblies required to have a *fire-resistance rating* and incorporating protective ceiling membranes, which operates to close off a duct opening through the membrane in the event of a fire.

Firewall means a type of *fire separation* of *noncombustible construction* which subdivides a *building* or separates adjoining *buildings* to resist the spread of fire and which has a *fire-resistance rating* as prescribed in this Code and has structural stability to remain intact under fire conditions for the required fire-rated time.

First storey means the uppermost *storey* having its floor level not more than 2 m above *grade*.

Fixture means a receptacle, *appliance*, apparatus or other device that discharges *sewage* or *clear-water waste*, and includes a floor drain.

Fixture drain means the pipe that connects a *trap* serving a *fixture* to another part of a *drainage system*.

Fixture outlet pipe means a pipe that connects the waste opening of a *fixture* to the *trap* serving the *fixture*. (See Figure A-1.4.1.2.(1)-H in Appendix A.)

Fixture unit (as applying to *drainage systems*) means the unit of measure based on the rate of discharge, time of operation and frequency of use of a *fixture* that expresses the hydraulic load that is imposed by that *fixture* on the *drainage system*.

Fixture unit (as applying to *water distribution systems*) means the unit of measure based on the rate of supply, time of operation and frequency of use of a *fixture* or outlet that expresses the hydraulic load that is imposed by that *fixture* or outlet on the supply system.

Flame-spread rating means an index or classification indicating the extent of spread-of-flame on the surface of a material or an assembly of materials as determined in a standard fire test as prescribed in this Code.

Flammable liquid means a liquid having a *flash point* below 37.8°C and having a vapour pressure not more than 275.8 kPa (absolute) at 37.8°C as determined by ASTM D 323, “Vapor Pressure of Petroleum Products (Reid Method).”

Flash point means the minimum temperature at which a liquid within a container gives off vapour in sufficient concentration to form an ignitable mixture with air near the surface of the liquid.

Flood level rim means the top edge at which water can overflow from a *fixture* or device. (See Figure A-1.4.1.2.(1)-B in Appendix A.)

Floor area means the space on any *storey* of a *building* between exterior walls and required *firewalls*, including the space occupied by interior walls and *partitions*, but not including *exits*, *vertical service spaces*, and their enclosing assemblies.

Flow control roof drain means a *roof drain* that restricts the flow of *storm water* into the *storm drainage system*.

Flue means an enclosed passageway for conveying *flue* gases.

Flue collar means the portion of a fuel-fired *appliance* designed for the attachment of the *flue pipe* or *breeching*.

Flue pipe means the pipe connecting the *flue collar* of an *appliance* to a *chimney*.

Forced-air furnace means a *furnace* equipped with a fan that provides the primary means for the circulation of air.

Foundation means a system or arrangement of *foundation units* through which the loads from a *building* are transferred to supporting *soil* or *rock*.

Foundation unit means one of the structural members of the *foundation* of a *building* such as a footing, raft or *pile*.

Fresh air inlet means a *vent pipe* that is installed in conjunction with a *building trap* and terminates outdoors. (See Appendix Note A-7.4.5.4.(1) in Division B.)

Frost action means the phenomenon that occurs when water in *soil* is subjected to freezing which, because of the water/ice phase change or ice lens growth, results in a total volume increase or the build-up of expansive forces under confined conditions or both, and the subsequent thawing that leads to loss of *soil* strength and increased compressibility.

Furnace means a *space-heating appliance* using warm air as the heating medium and usually having provision for the attachment of ducts.

Gas vent means that portion of a *venting system* designed to convey vent gases to the outdoors from the *vent connector* of a gas-fired *appliance* or directly from the *appliance* when a *vent connector* is not used.

Grade (as applying to the determination of *building height*) means the lowest of the average levels of finished ground adjoining each exterior wall of a *building*, except that localized depressions such as for vehicle or pedestrian entrances need not be considered in the determination of average levels of finished ground. (See *First storey*.)

Groundwater means a free standing body of water in the ground.

Groundwater level (*groundwater* table) means the top surface of a free standing body of water in the ground.

Guard means a protective barrier around openings in floors or at the open sides of stairs, landings, balconies, *mezzanines*, galleries, raised *walkways* or other locations to prevent accidental falls from

one level to another. Such barrier may or may not have openings through it.

Heat detector means a *fire detector* designed to operate at a predetermined temperature or rate of temperature rise.

Heavy timber construction means that type of *combustible construction* in which a degree of fire safety is attained by placing limitations on the *sizes* of wood structural members and on thickness and composition of wood floors and roofs and by the avoidance of concealed spaces under floors and roofs.

Heritage building is a *building* which is legally protected or officially recognized as a heritage property by the Provincial or a local government. (See Appendix A.)

High-hazard industrial occupancy (Group F, Division 1) means an *industrial occupancy* containing sufficient quantities of highly *combustible* and flammable or explosive materials which, because of their inherent characteristics, constitute a special fire hazard.

Horizontal exit means an *exit* from one *building* to another by means of a doorway, vestibule, *walkway*, bridge or balcony.

Horizontal service space means a space such as an attic, duct, ceiling, roof or crawl space oriented essentially in a horizontal plane, concealed and generally inaccessible, through which *building* service facilities such as pipes, ducts and wiring may pass.

Impeded egress zone means a supervised area in which occupants have free movement but require the release, by security personnel, of security doors at the boundary before they are able to leave the area, but does not include a *contained use area*.

Indirect service water heater means a *service water heater* that derives its heat from a heating medium such as warm air, steam or hot water.

Indirectly connected means not *directly connected*. (See Figure A-7.3.3.11.(2) in Division B.)

Individual vent means a *vent pipe* that serves one *fixture*.

Industrial occupancy means the *occupancy* or use of a *building* or part thereof for the assembling, fabricating, manufacturing, processing, repairing or storing of goods and materials.

Interceptor means a receptacle that is installed to prevent oil, grease, sand or other materials from passing into a *drainage system*.

Interconnected floor space means superimposed *floor areas* or parts of *floor areas* in which floor assemblies that are required to be *fire separations* are penetrated by openings that are not provided with *closures*.

Leader means a pipe that is installed to carry *storm water* from a roof to a *storm building drain* or *storm building sewer* or other place of disposal.

Limiting distance means the distance from an *exposing building face* to a property line, the centre line of a *street*, lane or public thoroughfare, or to an imaginary line between 2 *buildings* or *fire compartments* on the same property, measured at right angles to the *exposing building face*.

Live load means a variable load due to the intended use and *occupancy* that is to be assumed in the design of the structural members of a *building*. It includes loads due to cranes and the pressure of liquids in containers.

Loadbearing (as applying to a *building* element) means subjected to or designed to carry loads in addition to its own *dead load*, excepting a wall element subjected only to wind or earthquake loads in addition to its own *dead load*.

Low-hazard industrial occupancy (Group F, Division 3) means an *industrial occupancy* in which the *combustible* content is not more than 50 kg/m^2 or 1 200 MJ/m^2 of *floor area*.

Major occupancy means the principal *occupancy* for which a *building* or part thereof is used or intended to be used, and shall be deemed to include the subsidiary occupancies which are an integral part of the principal *occupancy*. The *major occupancy* classifications used in this Code are as follows:

A-1 *Assembly occupancies* intended for the production and viewing of the performing arts.

A-2 *Assembly occupancies* not elsewhere classified in Group A

A-3 *Assembly occupancies* of the arena type

A-4 *Assembly occupancies* in which the occupants are gathered in the open air

B-1 Care and detention occupancies in which persons are under restraint or are incapable of self-preservation because of security measures not under their control

B-2 Care and detention occupancies in which persons having cognitive or physical limitations require special care or treatment

C *Residential occupancies*

D *Business and personal service occupancies*

E *Mercantile occupancies*

F-1 *High-hazard industrial occupancies*

F-2 *Medium-hazard industrial occupancies*

F-3 *Low-hazard industrial occupancies*

Masonry or concrete chimney means a *chimney* of brick, stone, concrete or masonry units constructed on site.

Means of egress means a continuous path of travel provided for the escape of persons from any point in a *building* or contained open space to a separate *building*, an open public thoroughfare, or an exterior open space protected from fire exposure from the *building* and having *access* to an open public thoroughfare. *Means of egress* includes *exits* and *access* to *exits*.

Medium-hazard industrial occupancy (Group F, Division 2) means an *industrial occupancy* in which the *combustible* content is more than 50 kg/m^2 or 1 200 MJ/m^2 of *floor area* and not classified as *high-hazard industrial occupancy*.

Mercantile occupancy means the *occupancy* or use of a *building* or part thereof for the displaying or selling of retail goods, wares or merchandise.

Mezzanine means an intermediate floor assembly between the floor and ceiling of any room or *storey* and includes an interior balcony.

Nominally horizontal means at an angle of less than 45° with the horizontal. (See Figure A-1.4.1.2.(1)-J in Appendix A.)

Nominally vertical means at an angle of not more than 45° with the vertical. (See Figure A-1.4.1.2.(1)-J in Appendix A.)

Noncombustible means that a material meets the acceptance criteria of CAN4-S114, “Determination of Non-Combustibility in Building Materials.”

Noncombustible construction means that type of construction in which a degree of fire safety is attained by the use of *noncombustible* materials for structural members and other *building* assemblies.

Occupancy means the use or intended use of a *building* or part thereof for the shelter or support of persons, animals or property.

Occupant load means the number of persons for which a *building* or part thereof is designed.

Offset means the piping that connects the ends of 2 pipes that are parallel. (See Figure A-1.4.1.2.(1)-K in Appendix A.)

Offset relief vent means a *relief vent* that provides additional air circulation upstream and downstream of an offset in a *soil-or-waste stack*. (See Appendix Note A-7.5.4.4.(1) of Division B.)

Open air storey means a *storey* in which at least 25% of the total area of its perimeter walls is open to the outdoors in a manner that will provide cross ventilation to the entire *storey*.

Owner means any person, firm or corporation controlling the property under consideration during that period of application of Sentence 1.1.1.1.(1) of this Code.

Partition means an interior wall 1 *storey* or part-*storey* in height that is not *loadbearing*.

Party wall means a wall jointly owned and jointly used by 2 parties under easement agreement or by right in law, and erected at or upon a line separating 2 parcels of land each of which is, or is capable of being, a separate real-estate entity.

Persons with disabilities means a person who has a loss, or a reduction, of functional ability and activity and includes a person in a wheelchair and a person with a *sensory disability*.

Perched groundwater means a free standing body of water in the ground extending to a limited depth.

Pile means a slender *deep foundation* unit, made of materials such as wood, steel or concrete or combination thereof, that is either premanufactured and placed by driving, jacking, jetting or screwing, or cast-in-place in a hole formed by driving, excavating or boring. (Cast-in-place bored *piles* are often referred to as *caissons* in Canada)

Plenum means a chamber forming part of an air duct system.

Plumbing contractor means a person, corporation or firm that undertakes to construct, extend, alter, renew or repair any part of a *plumbing system*.

Plumbing system means a *drainage system*, a *venting system* and a *water system* or parts thereof.

Post-disaster building means a *building* that is essential to the provision of services in the event of a disaster, and includes

- hospitals, emergency treatment facilities and blood banks,
- telephone exchanges,
- power generating stations and electrical substations,
- control centres for air, land and marine transportation,
- public water treatment and storage facilities, and pumping stations,
- *sewage* treatment facilities and *buildings* having critical national defence functions, and *buildings* of the following types, unless
- exempted from this designation by the authority having jurisdiction:
    - emergency response facilities
    - fire, rescue and police stations and housing for vehicles, aircraft or boats used for such purposes
    - communications facilities, including radio and television stations.

(See Appendix A.)

Potable means safe for human consumption.

Private sewage disposal system means a privately owned plant for the treatment and disposal of *sewage* (such as a septic tank with an absorption field).

Private use (as applying to the classification of plumbing *fixtures*) means *fixtures* in residences and apartments, in private bathrooms of hotels, and in similar installations in other *buildings* for one family or an individual.

Private water supply system means an assembly of pipes, fittings, valves, equipment and appurtenances that supplies water from a private source to a *water distribution system*.

Protected floor space means that part of a *floor area* protected from the effects of fire and used as part of a *means of egress* from an *interconnected floor space*.

Public corridor means a corridor that provides *access to exit* from more than one *suite*. (See Appendix A.)

Public use (as applying to the classification of plumbing *fixtures*) means *fixtures* in general washrooms of schools, gymnasiums, hotels, bars, public comfort stations and other installations where *fixtures* are installed so that their use is unrestricted.

Public way means a sidewalk, *street*, highway, square or other open space to which the public has *access*, as of right or by invitation, expressed or implied.

Range means a cooking *appliance* equipped with a cooking surface and one or more ovens.

Registered professional means

a) a person who is registered or licensed to practise as an architect under the Architects Act, or

b) a person who is registered or licensed to practise as a professional engineer under the Engineers and Geoscientists Act.

Registered professional of record means a registered professional retained to undertake design work and *field review* in accordance with Subsection 2.2.7 of Division C.

[Rev. 10, B.C. Reg. 232/2010.]

Relief vent means a *vent pipe* that is used in conjunction with a *circuit vent* to provide additional air circulation between a *drainage system* and a *venting system*.

Repair garage means a *building* or part thereof where facilities are provided for the repair or servicing of motor vehicles.

Residential full flow-through fire sprinkler/standpipe system means an assembly of pipes and fittings installed in a one- or two-family dwelling that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets and is fully integrated into the *potable water system* to ensure regular flow of water through all parts of both systems.

Residential partial flow-through fire sprinkler/standpipe system means an assembly of pipes and fittings installed in a one- or two-family dwelling that conveys water from the *water service pipe* to the sprinkler/standpipe system's outlets and in which flow, during inactive periods of the sprinkler/standpipe system, occurs only through the main header to the water closet located at the farthest point of the two systems.

Residential occupancy means the *occupancy* or use of a *building* or part thereof by persons for whom sleeping accommodation is provided but who are not harboured or detained to receive medical care or treatment or are not involuntarily detained.

Return duct means a duct for conveying air from a space being heated, ventilated or air-conditioned back to the heating, ventilating or air-conditioning *appliance*.

Riser means a water distribution pipe that extends through at least one full *storey*.

Rock means that portion of the earth's crust which is consolidated, coherent and relatively hard and is a naturally formed, solidly bonded, mass of mineral matter which cannot readily be broken by hand.

Roof drain means a fitting or device that is installed in the roof to permit *storm water* to discharge into a *leader*.

Roof gutter means an exterior channel installed at the base of a sloped roof to convey *storm water*.

Sanitary building drain means a building drain that conducts *sewage* to a *building sewer* from the most upstream *soil-or-waste stack*, *branch* or fixture drain serving a water closet.

Sanitary building sewer means a building sewer that conducts *sewage*.

Sanitary drainage system means a *drainage system* that conducts *sewage*.

Sanitary sewer means a sewer that conducts *sewage*.

Secondary suite means an additional *dwelling unit*

a) having a total floor space of not more than 90 m^2 in area,

b) having a floor space less than 40% of the habitable floor space of the *building*,

c) located within a *building* of *residential occupancy* containing only one other *dwelling unit*, and

d) located in and part of a *building* which is a single real estate entity.

(See Appendix A-9.36.1.1.)

Sensory disability includes visual and hearing impairments.

Service room means a room provided in a *building* to contain equipment associated with *building* services. (See Appendix A.)

Service space means space provided in a *building* to facilitate or conceal the installation of *building* service facilities such as chutes, ducts, pipes, shafts or wires.

Service water heater means a device for heating water for plumbing services.

Sewage means any liquid waste other than *clear-water waste* or *storm water*.

Shallow foundation means a *foundation unit* which derives its support from *soil* or *rock* located close to the lowest part of the *building* which it supports.

Size means the nominal diameter by which a pipe, fitting, *trap* or other similar item is commercially designated.

Smoke alarm means a combined *smoke detector* and audible alarm device designed to sound an alarm within the room or *suite* in which it is located upon the detection of smoke within that room or *suite*.

Smoke detector means a *fire detector* designed to operate when the concentration of airborne combustion products exceeds a pre-determined level.

Soil means that portion of the earth's crust which is fragmentary, or such that some individual particles of a dried sample may be readily separated by agitation in water; it includes boulders, cobbles, gravel, sand, silt, clay and organic matter.

Soil-or-waste pipe or *waste pipe* means a pipe in a *sanitary drainage system*.

Soil-or-waste stack means a vertical *soil-or-waste pipe* that passes through one or more *storeys*, and includes any offset that is part of the stack.

Space heater means a *space-heating appliance* for heating the room or space within which it is located, without the use of ducts.

Space-heating appliance means an *appliance* intended for the supplying of heat to a room or space directly, such as a *space heater*, fireplace or *unit heater*, or to rooms or spaces of a *building* through a heating system such as a central *furnace* or *boiler*.

Sprinklered (as applying to a *building* or part thereof) means that the *building* or part thereof is equipped with a system of automatic sprinklers.

Stack vent means a *vent pipe* that connects the top of a *soil-or-waste stack* to a *vent header* or outside air. (See Figure A-1.4.1.2.(1)-F in Appendix A.)

Stage means a space designed primarily for theatrical performances with provision for quick change scenery and overhead lighting, including environmental control for a wide range of lighting and sound effects and which is traditionally, but not necessarily, separated from the audience by a proscenium wall and curtain opening.

Storage garage means a *building* or part thereof intended for the storage or parking of motor vehicles and which contains no provision for the repair or servicing of such vehicles. (See Appendix A.)

Storage-type service water heater means a *service water heater* with an integral hot water storage tank.

Storey means that portion of a *building* which is situated between the top of any floor and the top of the floor next above it, and if there is no floor above it, that portion between the top of such floor and the ceiling above it.

Storey (as applying to plumbing) means the interval between 2 successive floor levels, including *mezzanine* floors that contain plumbing *fixtures*, or between a floor level and roof.

Storm building drain means a *building* drain that conveys *storm water* and is connected at its upstream end to a *leader*, sump or catch basin, and at its downstream end to a *building sewer* or a designated *storm water* disposal location.

Storm building sewer means a *building sewer* that conveys *storm water*.

Storm drainage system means a *drainage system* that conveys *storm water*.

Storm sewer means a sewer that conveys *storm water*.

Storm water means water that is discharged from a surface as a result of rainfall or snowfall.

Stove means an *appliance* intended for cooking and space heating.

Street means any highway, road, boulevard, square or other improved thoroughfare 9 m or more in width, which has been dedicated or deeded for *public use*, and is *accessible* to fire department vehicles and equipment.

Subsoil drainage pipe means a pipe that is installed underground to intercept and convey subsurface water.

Subsurface investigation means the appraisal of the general subsurface conditions at a *building* site by analysis of information gained by such methods as geological surveys, in situ testing, sampling, visual inspection, laboratory testing of samples of the subsurface materials and *groundwater* observations and measurements.

Suite means a single room or series of rooms of complementary use, operated under a single tenancy, and includes *dwelling units*, individual guest rooms in motels, hotels, boarding houses, rooming houses and dormitories as well as individual stores and individual or complementary rooms for business and personal services occupancies. (See Appendix A.)

Supply duct means a duct for conveying air from a heating, ventilating or air-conditioning *appliance* to a space to be heated, ventilated or air-conditioned.

Theatre means a place of public assembly intended for the production and viewing of the performing arts or the screening and viewing of motion pictures, and consisting of an auditorium with permanently fixed seats intended solely for a viewing audience.

Trap means a fitting or device that is designed to hold a liquid seal that will prevent the passage of gas but will not materially affect the flow of a liquid.

Trap arm means that portion of a *fixture drain* between the *trap weir* and the *vent pipe* fitting. (See Appendix Note A-7.5.6.3.(1) in Division B.)

Trap dip means the lowest part of the upper interior surface of a *trap*.

Trap seal depth means the vertical distance between the *trap dip* and the *trap weir*. (See Appendix Note A-7.2.3.1.(1) and (3) in Division B.)

Trap standard means the trap for a *fixture* that is integral with the support for the *fixture*.

Trap weir means the highest part of the lower interior surface of a *trap*. (See Appendix Note A-7.2.3.1.(1) and (3) in Division B.)

Unit heater means a suspended *space heater* with an integral air circulating fan.

Unprotected opening (as applying to *exposing building face*) means a doorway, window or opening other than one equipped with a *closure* having the required *fire-protection rating*, or any part of a wall forming part of the *exposing building face* that has a *fire-resistance rating* less than required for the *exposing building face*.

Unsafe condition means any condition that could cause undue hazard to life, limb or health of any person authorized or expected to be on or about the premises.

Vacuum breaker (See *back-siphonage preventer*).

Vapour barrier means the elements installed to control the diffusion of water vapour.

Vent connector (as applying to heating or cooling systems) means the part of a *venting system* that conducts the *flue* gases or vent gases from the *flue collar* of a gas *appliance* to the *chimney* or *gas vent*, and may include a draft control device.

Vent header means a *vent pipe* that connects any combination of *stack vents* or *vent stacks* to outside air. (See Figure A-1.4.1.2.(1) in Appendix A.)

Vent pipe means a pipe that is part of a *venting system*.

Vent stack means a *vent pipe* that is connected at its upper end to a *vent header* or that terminates in outside air and is connected at its lower end to the *soil-or-waste stack* at or below the lowest *soil-or-waste pipe* connection. (See Figure A-1.4.1.2.(1)-G in Appendix A.)

Venting system means an assembly of pipes and fittings that connects a *drainage system* with outside air for circulation of air and the protection of trap seals in the *drainage system*. (See Figure A-1.4.1.2.(1)-G in Appendix A.)

Vertical service space means a shaft oriented essentially vertically that is provided in a *building* to facilitate the installation of *building* services including mechanical, electrical and plumbing installations and facilities such as elevators, refuse chutes and linen chutes.

Walkway means a covered or roofed pedestrian thoroughfare used to connect 2 or more *buildings*.

Waste pipe (See *soil-or-waste pipe*).

Water distribution system means an assembly of pipes, fittings, valves and appurtenances that conveys water from the *water service pipe* or *private water supply system* to water supply outlets, *fixtures*, *appliances* and devices.

Water service pipe means a pipe that conveys water from a public water main or private water source to the inside of the *building*.

Water system means a *private water supply system*, a *water service pipe*, a *water distribution system* or parts thereof.

Wet vent means a *soil-or-waste pipe* that also serves as a *vent pipe* and extends from the most downstream wet-vented *fixture* connection to the most upstream *fixture* connection. (See Appendix Note A-7.5.8.1.(2) of Division B.)

Yoke vent means a *vent pipe* that is connected at its lower end to a *soil-or-waste stack* and at its upper end to a *vent stack* or to a *branch vent* connected to a *vent stack*. (See Appendix Note A-7.5.4.3. of Division B.)

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