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May 17, 2017

Patrick Wruck  
Commission Secretary  
British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck

**RE: British Columbia Utilities Commission  
City of Surrey – Application for an order pursuant to  
Section 32(2) of the *Utilities Commission Act***

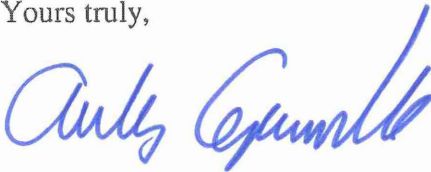
The City of Surrey is hereby applying to the British Columbia Utilities Commission ("Commission") for an order pursuant to subsection 32(2) of the *Utilities Commission Act* specifying the terms under which FortisBC Energy Inc. ("FEI") may install, operate and maintain its distribution equipment in public places within Surrey's boundary limits. The details and rationale for this Application are enclosed.

FEI is aware that we are submitting this Application, and FEI will be making its own submission to the Commission on this matter imminently. Both parties anticipate that the Commission will consider the positions of each party in one process, and ultimately issue an order specifying and approving the terms for FEI's use of public places within Surrey's boundary limits.

Please direct any communications regarding this Application to:

Anthony Capuccinello Assistant City Solicitor City of Surrey 13450-104 Avenue Surrey, BC V3T 1V8 T: 604-591-4188 E: ACapuccinello@surrey.ca	Ian Webb Legal Counsel Lawson Lundell LLP 1600-925 West Georgia Street Vancouver, BC V6C 3L2 T: 604-631-9117 E: iwebb@lawsonlundell.com
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Yours truly,



ANTHONY CAPUCCINELLO  
Assistant City Solicitor

AC/cp

Enclosures

**City of Surrey**  
**Application for an Order pursuant to**  
**Section 32(2) of the *Utilities Commission Act***

**1. Introduction**

This is an application requesting that the British Columbia Utilities Commission (“**Commission**”) issue an order pursuant to subsection 32(2) of the *Utilities Commission Act*<sup>1</sup> (“**UCA**”) specifying the manner and terms under which FortisBC Energy Inc.’s (“**FEI**”) may install, operate and maintain its distribution equipment in public places within the boundary limits of the City of Surrey (“**Surrey**”).

Since about 1956 FEI and its predecessors have occupied and used public places in Surrey for the purposes of natural gas distribution pursuant to a Trunk Line Agreement (the “**1956 Agreement**”) and a Natural Gas Distribution Agreement (the “**1957 Agreement**”) between the British Columbia Electric Company Limited<sup>2</sup> and the Corporation of the District of Surrey. In 2013, Mr. Justice Pearlman of the British Columbia Supreme Court determined that the 1956 Agreement was terminated and, for some time, the parties have not agreed on the scope, validity and enforceability of the 1957 Agreement resulting in various disagreements. Accordingly, for the last two years the parties have been attempting to reach agreement on new terms (an “**Operating Agreement**”) to replace the 1957 Agreement and provide certainty going forward. A copy of the 1957 Agreement is provided in Appendix A to this application.<sup>3</sup>

To facilitate the negotiation of an Operating Agreement the parties entered into an Interim Agreement in November 2016, which provides for the termination of the 1957 Agreement and its replacement by terms to be negotiated by the parties or, failing agreement, to apply to the Commission by May 31, 2017 for an order specifying the terms. A copy of this Interim Agreement is provided in Appendix A to this Application.

The parties have reached agreement on many terms for an Operating Agreement; however, they have reached an impasse on certain key items, necessitating this Application.

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<sup>1</sup> R.S.B.C. 1996, c. 473.

<sup>2</sup> In 1964, the British Columbia Electric Company Limited was amalgamated into the British Columbia Hydro and Power Authority. In 1988, BC Hydro transferred its lower mainland natural gas assets to a private company which, following several name changes, is now FEI.

<sup>3</sup> A copy of the 1957 Agreement is attached to the Interim Agreement provided in Appendix A.

Surrey's approach to developing operating terms for FEI has been based on the existing operating terms FEI has recently entered into with municipalities in the interior and on Vancouver Island, and adapting those terms for Surrey's circumstances. Unlike the interior and Vancouver Island municipalities, Surrey is a very dense and rapidly growing urban city, as discussed further below. Surrey's objectives for operating terms with FEI relate primarily to: (i) reasonable oversight of FEI's activities in the municipality to efficiently manage the safe use of public places by multiple utilities, Surrey's own use and the public, and (ii) reasonable financial terms, in both cases consistent with provincial standards.

Surrey's requested terms for FEI's use of public places within Surrey's boundary limits are provided in Appendix B to this Application. A draft Commission order is provided in Appendix C.

The remainder of the body of this Application is structured as follows:

- section 2 sets out the statutory basis for the Order sought;
- section 3 provides contextual information regarding the City of Surrey and FEI's existing use of public places in Surrey;
- section 4 provides further information on the items in respect of which the parties have not reached agreement and Surrey's position respecting each of these issues;
- section 5 provides concluding remarks; and
- section 6 provides initial comments on process for the Commission's consideration of the Application.

## **2. Statutory Basis for Order Sought**

FEI is a public utility under the *UCA*. FEI is also a gas utility under the *Gas Utility Act* as follows:

"gas utility" means a person that owns or operates in British Columbia equipment or facilities for the production, generation, storage, transmission, sale, delivery or furnishing of gas for the production of light, heat, cold or power to or for the public or a corporation for compensation, but does not include a company within the meaning of that word as defined in the *National Energy Board Act* (Canada)<sup>4</sup>

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<sup>4</sup> *Gas Utility Act*, R.S.B.C. 1996, c. 170, section 1.

Pursuant to subsections 2(1) and 2(2) of the *Gas Utility Act*, a gas utility that on April 14, 1954 was carrying on business as a gas utility in a municipality, or to which a CPCN has been granted under the *UCA* or the legislation that preceded it, is authorized and empowered, subject to the *UCA*, to carry on its business as a gas utility in the municipality.

Pursuant to subsection 2(3)(c) of the *Gas Utility Act*, such a gas utility (including FEI) may,

place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances for mixing, transmitting, distributing, delivering, furnishing and taking delivery of gas on, along, across, over or under any public street, lane, square, park, public place, bridge, viaduct, subway or watercourse... in a municipality, on the conditions that the gas utility and the municipality agree to<sup>5</sup>

If the gas utility and the municipality are not able to reach agreement on the terms and conditions of the gas utility's access to public places in the municipality for such purposes, the parties or either of them may seek relief from the Commission pursuant to section 32 of the *UCA*, as follows:

32 (1) This section applies if a public utility

(a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and

(b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

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<sup>5</sup> Underlining added.

Accordingly, FEI is authorized and empowered, subject to the *UCA*, to carry on its business as a gas utility in Surrey, and may construct, operate and maintain its distribution equipment<sup>6</sup> on, along, across, over or under public places in Surrey on the terms and conditions FEI and Surrey agree to. Failing such agreement the Commission may, by order, specify the manner and terms of FEI's use of public places in Surrey for such purposes.

As noted above, the parties have agreed on many terms for an Operating Agreement; however, they have not been able to reach agreement on all terms, necessitating this Application for an order pursuant to section 32(2) of the *UCA*.

### **3. About the City of Surrey**

This section of the Application provides contextual information about the City of Surrey and FEI's existing use of public places in Surrey.

The City of Surrey is south of the Fraser River, between the cities of Delta and Langley. Surrey was incorporated in 1879 and officially became a city in 1993. It has six distinct communities each with its own town centre: Cloverdale, Fleetwood, Guildford, Newton, South Surrey and Whalley / City Centre.

#### *(i) Residents*

Surrey has a population of approximately 520,000 making it the 2<sup>nd</sup> largest city in British Columbia and the 12<sup>th</sup> largest in Canada by population. Surrey is growing quickly. The population grew by 10.6% from 2011 to 2016 (or approximately 2% per year) which was the 4<sup>th</sup> highest among municipalities with populations over 200,000 in Canada, and 2<sup>nd</sup> highest among the 10 largest municipalities in B.C. Surrey is expected to become the most populous city in the province, surpassing the City of Vancouver within 10 years. Based on current projections, 25% of Metro Vancouver residents will live in Surrey by 2045.

Surrey is a young city, with 26% of its population 19 years old or younger, compared with just 20% for Metro Vancouver as a whole. Surrey has the largest school district in the province, with 72,000 students, and is one of the few districts with a growing student population.

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<sup>6</sup> The *UCA* defines "distribution equipment" as "posts, pipes, wires, transmission mains, distribution mains and other apparatus of a public utility used to supply service to the utility customers".

### *(ii) Land Area*

The total land area of Surrey is 316 km<sup>2</sup> stretching from the Fraser River in the north to Boundary Bay and the US border in the south, and it is the 2<sup>nd</sup> largest urban municipality by area in the province (slightly smaller than the City of Abbotsford). Approximately 30% of the land area of Surrey is protected in the Agricultural Land Reserve.

### *(iii) Housing*

Construction in Surrey in 2016 totaled \$1.47 billion in construction value, including 4,280 new dwelling units and \$391,700 in non-residential construction (industrial, commercial and institutional). Over the past 5 years, the average total construction value in Surrey has been \$1.28 billion per year.

Surrey's housing stock is changing from primarily single-family to multi-family units as the City grows denser. Of the 4,280 new dwelling units constructed in 2016, 60% were multi-family units. Over the past 5 years multi-family units have accounted for between half and three-quarters of all dwellings built.

Relatively affordable housing for families and workers along with excellent transportation connections to the rest of the region by highway and Sky Train are key factors driving population growth and economic development.

### *(iv) Infrastructure*

Surrey has about 2,300 kms of paved roads. For comparison purposes, the City of Victoria has about 280 kms of paved roads.

A new Light Rail Transit system is being planned to tie Surrey's communities together, as well as to the City Centre and the regional Sky Train system. It is expected that the system will be operating by the year 2023, with completion of the entire system in 2028.

Surrey is home to two degree-granting universities, including three campuses of Kwantlen Polytechnic University and SFU-Surrey. UBC's Faculty of Medicine also operates a teaching hospital at Surrey Memorial Hospital, which is the second-largest hospital in the province and is anchoring a growing health services and health tech district known as Innovation Boulevard.

Key employment sectors in Surrey include manufacturing, transport and logistics, warehousing, retail, public institutions, financial and personal services, health care and education. Emerging employment sectors include the fast-growing high technology, clean energy, health technology and film sectors.

*(v) FEI Facilities in Surrey*

There is more FEI distribution equipment in Surrey than in any other municipality in the province. FEI has 2,685 kms of pipes within Surrey's boundaries.<sup>7</sup> To put that number in context, FEI has 340 kms of pipes in the City of Victoria.<sup>8</sup>

Most of FEI's pipes in Surrey are under paved roads or under the shoulders of paved roads. Largely due to the extent of FEI facilities in Surrey and the extent of development in Surrey associated with economic and population growth, as reviewed above, Surrey has more capital projects requiring FEI to relocate their facilities to accommodate the project than the rest of the municipalities in the province combined.

As shown in Figure 1 below, Surrey has reimbursed FEI \$5.4 million over the last six years (2010 to 2015) related to relocating FEI facilities to accommodate Surrey's projects (primarily highway widenings, water and sewer works).

**Figure 1 – Surrey's Costs to Relocate FEI Gas Mains and Transmission Pipes**

Gas Pipeline Type*	2010	2011	2012	2013	2014	2015
Distribution	\$403,372	\$358,361	\$183,479	\$541,773	\$757,626	\$135,582
Transmission	\$76,293	\$0	\$959,325	\$2,019,032	\$0	\$0
<b>Total Cost</b>	<b>\$479,665</b>	<b>\$358,361</b>	<b>\$1,142,804</b>	<b>\$2,518,533</b>	<b>\$799,898</b>	<b>\$135,582</b>

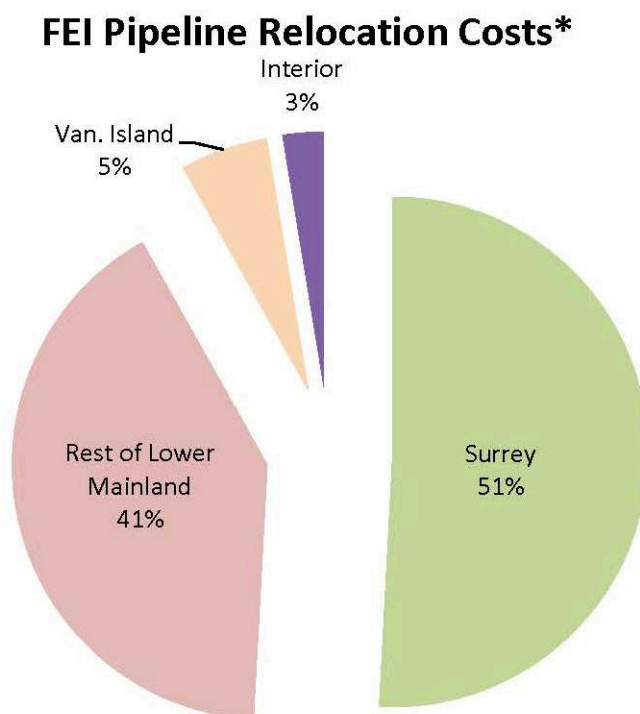
<sup>7</sup> Consisting of 2,571 kms of distribution mains and 114 kms of high pressure transmission pipelines.

<sup>8</sup> Consisting of 332 kms of distribution mains and 8 kms of transmission pipelines.



As shown in Figure 2 below, Surrey has incurred more than half of the total costs of all municipalities in the province in relation to relocating FEI pipes to accommodate municipal works. Surrey's 51% of total costs compares to all municipalities on Vancouver Island at 5% and all interior municipalities at 3% of the total.

**Figure 2 – Surrey Proportion of BC Municipality Pipeline Relocation Costs**



\* Costs from 2010 - 2015.

For greater certainty, Surrey is not opposed to FEI placing its distribution equipment in Surrey public places and operating, maintaining and expanding its system. Surrey's objective is operating terms that are consistent with the operating terms FEI has with other municipalities, adapted for the dense and rapidly growing urban environment of Surrey.

#### **4. Requested terms for FEI's use of Public Places in Surrey**

Surrey's requested terms for FEI's use of public places within Surrey's boundary limits are provided in Appendix B. Surrey's requested terms are largely the same in principle as the operating terms the Commission has reviewed and/or approved in respect of several other municipalities in the province.

The terms in Appendix B reflect the agreement of the parties on all but a few key terms for an Operating Agreement. The terms not agreed to are for the most part major financial terms.

This Application will not provide a review of all the terms the parties have agreed to. We understand that FEI might be providing such a review in its filing. This Application will focus on the items we understand are not agreed to, and provide Surrey's position with respect to each of these items.

The items not agreed between Surrey and FEI are as follows:

*(i) Operating Fee*

Surrey requests that the terms for FEI's use of public places within Surrey's boundary limits include an operating fee ("**Operating Fee**") of 3% of the gross revenues (excluding taxes) received by FEI for provision and distribution of all gas consumed within the boundaries of Surrey, other than gas consumed by customers from whom the Commission has not allowed FEI to collect the Operating Fee. Such amount will not include any amount received by FEI for gas supplied or sold for resale.

We understand that this 3% of gross revenues Operating Fee is precisely the same operating fee as FEI collects and remits to 70 other municipalities in the province and, as such, it is the standard in FEI's operating agreements with other B.C. municipalities. Surrey City Council has approved the request for the 3% of gross revenues Operating Fee, the same as 70 other municipalities are now receiving.

We also note that Surrey agrees to waive any approval, license, inspection or permit fees, charges and security deposit requirements in respect of FEI's work and occupancy of public places in Surrey, which is on condition of receiving the Operating Fee at 3% of FEI's gross revenues. The waiver of fees and charges is provided for in section 5.1 of the requested terms in Appendix B.

The requested Operating Fee provisions are contained in section 12 of the requested terms Appendix B. The wording is identical to the wording the Commission has reviewed and/or

approved for other operating agreements, including that approved by Order No. G-113-12 dated August 23, 2012 in respect of operating terms for FEI in the District of Coldstream.<sup>9</sup>

We understand that FEI does not support an Operating Fee at 3% of gross revenues, and prefers an Operating Fee at a significantly lower percentage applied only to delivery revenue (that is, excluding commodity revenue). We will leave it to FEI to explain their position.

*(ii) Definition and Allocation of Facility Relocation Costs*

The agreed terms specify processes for the situation where a party (the “**Initiating Party**”) plans to undertake a project and might require the other party (the “**Relocating Party**”) to realign, raise, lower, protect, by-pass or relocate (for simplicity referred to as “relocate” hereafter) their facilities to accommodate the Initiating Party’s work. The agreed terms provide for the Relocating Party to provide an estimate of their costs of such work (“**Relocation Costs**”) and for the Initiating Party to reimburse some or all of the Relocating Party’s Relocation Costs.

*(a) Definition of “Relocation Costs”*

Surrey requests that the terms for FEI’s use of public places within Surrey’s boundary limits define such Relocation Costs as specifically excluding the value or incremental costs of any upgrading and/or betterment of facilities a Relocating Party might undertake while relocating their facilities to accommodate the Initiating Party’s work. Surrey further requests that such value or incremental costs of upgrading and/or betterment of facilities be excluded whether or not they are required by applicable codes and standards.

Surrey proposes that these exclusions apply reciprocally, equally to whichever party is relocating their facilities at the request of the other party. Surrey believes this is appropriate because the Initiating Party simply needs additional space to accommodate their work. If the Relocating Party decides to take the opportunity presented by excavation of their facilities to upgrade their facilities or the facilities of their customers, either on the basis of economics or to meet current codes and standards, the upgrading or betterment is to the benefit of the Relocating Party and its customers and not to the Initiating Party that simply needs additional space to accommodate their work. Surrey has experienced situations where it asked FEI to relocate their facilities, and at the time of relocating FEI decided to upgrade its facilities to larger

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<sup>9</sup> The District of Coldstream did not reach agreement with FEI on operating terms requiring the Commission to specify the terms. By Order No. G-113-12 the Commission specified the operating terms for FEI in the District of Coldstream.

capacity and also replace other facilities and customer facilities not directly impacted by Surrey's work, and FEI asked Surrey to pay for the costs of the upgrades and other work. Surrey does not oppose FEI taking the opportunity of an excavation to undertake such upgrading and work; however, Surrey has opposed and continues to oppose reimbursing FEI for its incremental costs of such work. The benefit of such upgrading and betterment is to FEI and its customers. Surrey requests that this be specifically provided in the operating terms. Other jurisdictions, including the Ontario Energy Board in its model franchise agreement, specifically exclude the value of upgrading from relocation costs.<sup>10</sup>

Surrey's definition of Relocation Costs is contained in section 1 of the requested terms in Appendix B.

We understand that FEI supports excluding from Relocation Costs the value or incremental costs of any upgrading and/or betterment but only beyond that which is required to comply with applicable laws. It is not clear to us what, if any, value or incremental costs of upgrading and/or betterment of facilities would be excluded under FEI's proposed wording. We will leave it to FEI to explain their position.

*(b) Allocation of Relocation Costs*

The parties also do not agree on a second item related to relocations. In addition to disagreement on the extent to which upgrading and betterment costs are excluded from the definition of Relocation Costs, the parties also do not agree on the provisions specifying the portion of FEI's Relocation Costs that Surrey will reimburse.

Surrey requests that the terms for FEI's use of public places within Surrey's boundary limits specify that Surrey will reimburse FEI for its Relocation Costs in accordance with the applicable of subsection 3(3) or 3(4) of the Pipeline Crossing Regulation<sup>11</sup> under the *Oil and Gas Activities Act*<sup>12</sup>. Subsections 3(3) and 3(4) of the Pipeline Crossing Regulation specify the allocation of costs incurred by a "pipeline permit holder" (e.g., FEI) as a result of a "specified person" (e.g.,

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<sup>10</sup> Refer to subsection 12(c) of Ontario Energy Board's 2000 Model Franchise Agreement which specifically excludes "the value of any upgrading of the gas system" from reimbursable relocation costs. This model agreement is available at <https://www.oeb.ca/documents/franmod.pdf>.

<sup>11</sup> B.C. Reg. 147/2012. Pipeline crossing cost allocation provisions were previously in the Pipeline Regulation under the *Pipeline Act*. When the *Oil and Gas Activities Act* was put into effect beginning in 2008, the cost allocation provisions were removed from the Pipeline Regulation and added to the Pipeline Crossing Regulation in 2012.

<sup>12</sup> S.B.C. 2008, c. 36.

Surrey) carrying out work that requires a pipeline to be realigned, raised, lowered or protected. Subsections 3(3) and 3(4) of the Pipeline Crossing Regulation are the standards in British Columbia for allocation to a municipality of a pipeline permit holder's costs to relocate their facilities to accommodate municipal work (e.g., new highways).

Subsection 3(6) of the Pipeline Crossing Regulation provides for the prescribed cost allocation rules to be varied by agreement between the municipality and the pipeline permit holder; however, Surrey does not agree to such a variance for the purposes of operating terms. Surrey's position is that the Commission does not have jurisdiction to order cost allocation terms that are inconsistent with the Pipeline Crossing Regulation, in the absence of the municipality and the pipeline company agreeing to such variance. We also note that the Commission made a ruling on this issue in its Order G-113-12 Decision (at page 9) regarding operating terms for the District of Coldstream. A copy of the Pipeline Crossing Regulation is provided in Appendix D of this Application.

Surrey's wording for allocation of FEI Relocation Costs is contained in subsection 8.2(c) of the requested terms in Appendix B.

We understand that FEI prefers that Surrey reimburse FortisBC for 100% of its Relocation Costs when the affected facilities are gas mains, and 50% when the affected facilities are high pressure transmission pipelines, which in our view is inconsistent with subsections 3(3) and 3(4) of the Pipeline Crossing Regulation. We will leave it to FEI to explain their position.

*(iii) Highway Dedication*

To create highway, indefeasible title is extinguished through the registration and filing of a Road Dedication Plan under the *Land Title Act*<sup>13</sup>, or through the filing and registration of a subdivision plan which dedicates certain areas as highway. In order to be able to accomplish this, any person having an interest in the land to be dedicated as highway must consent to the dedication. Absent consent, highway can only be created through expropriation.

The parties have agreed that the operating terms should specify a process for the situation where Surrey intends to create or widen a highway on or through lands over which FEI holds a statutory right of way interest ("**SROW**") and the proposed highway will overlap with the SROW area. Surrey can request that FEI release a portion of its SROW for the creation or widening of

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<sup>13</sup> R.S.B.C.1996, c. 250.

the municipal highway. Notwithstanding the release of the portion of SROW, FEI retains the same rights (or acquires better rights) to occupy the area pursuant to the Operating Agreement (instead of the SROW). This provides a more efficient process than the alternative which may involve litigation to expropriate the SROW, ending up at the same place.

Surrey's wording in respect of such release of SROW for highways is contained in section 9 of the requested terms in Appendix B. Pursuant to Surrey's wording, FEI agrees to grant the release.

We understand that FEI agrees to Surrey's wording except that FEI prefers to retain the ability to consider each request for a release of SROW for highways on a case by case basis. We will leave it to FEI to explain their position.

## **5. Conclusions**

Surrey is a large and rapidly growing municipality in terms of both population and economy, and there is more FEI distribution equipment in Surrey than in any other municipality in the province. Largely due to the extent of FEI facilities in Surrey and the extent of development, Surrey has more capital projects requiring FEI to relocate their facilities to accommodate the project than the rest of the municipalities in the province combined.

For about two years the parties have been attempting to reach agreement on an Operating Agreement to replace the 1957 Agreement. The parties have reached agreement on many terms for an Operating Agreement; however, they have reached an impasse on certain key items as discussed above necessitating this Application to the Commission. The items in respect of which the parties do not agree are small in number, but two of them relate to major financial terms: Operating Fee, and Relocation Costs (definition and allocation).

With respect to the Operating Fee and Relocation Costs items, Surrey believes that its requested terms are consistent with provincial standards and therefore are reasonable.

With respect to the highway dedication item, Surrey believes that its requested terms provide a more efficient process for Surrey to create or widen a highway in an area where FEI has a SROW avoiding the time and expense of expropriation proceedings and without harm to FEI.

## **6. Comments on Commission Process for Considering Application**

Counsel for Surrey and counsel for FEI have had initial discussions about considerations for the Commission's review of the Application. FEI will be making its own submission to the Commission setting out its position on the operating terms agreed to and not agreed to. We understand that FEI will be making its submission imminently, and we request that the Commission not begin detailed consideration of this Application until it has received FEI's submission.

Both parties anticipate that the Commission will review and consider the positions of each party in one process, and ultimately issue an order specifying and approving the operating terms for FEI's use of public places within Surrey's boundary limits. Surrey's proposed form of order is provided in Appendix C to this Application.

With respect to process, we note that pursuant to subsection 32(2) of the *UCA*, the Commission may issue the requested order "on application and after any inquiry it considers advisable", which provides the Commission with more flexibility around process in this case as compared to those of its powers that may only be exercised after a hearing.

Once FEI has filed its submission, we will have further discussions with FEI regarding process considerations, and as soon as possible submit a proposal or proposals to the Commission with respect to process.

## INTERIM AGREEMENT

THIS AGREEMENT dated as of November 08, 2016 (the "Effective Date") is made

BETWEEN:

**THE CITY OF SURREY** (the "City of Surrey")

AND:

**FORTISBC ENERGY INC.** ("FortisBC")

WHEREAS:

- A. FortisBC is a public utility pursuant to the *Utilities Commission Act*, R.S.B.C. 1996, c. 473, as amended (the "**Utilities Commission Act**")
- B. Pursuant to the *Gas Utility Act*, R.S.B.C. 1996, c. 170, as amended, and certificates of public convenience and necessity pursuant to the *Utilities Commission Act*, FortisBC is authorised and empowered to construct and operate natural gas distribution equipment within the municipal area of the City of Surrey, subject to those statutes;
- C. British Columbia Electric Company Limited and the Corporation of the District of Surrey executed a Natural Gas Distribution Agreement dated June 13, 1957 (the "**1957 Agreement**"), attached as Schedule A to this Agreement.
- D. The Parties do not agree on, among other things, the scope, validity and enforceability of the 1957 Agreement; and
- E. The parties are negotiating an operating agreement with respect to the installation, construction, operation, repair, maintenance, alteration, extension and removal of FortisBC's natural gas distribution equipment on, along, across, over or under municipal highways and identified properties owned and/or controlled by the City of Surrey (collectively, the "**Highways and Municipal Properties**"), and with respect to clarifying and settling the terms and conditions under which FortisBC shall exercise its rights to use such Highways and Municipal Properties (the "**Operating Agreement**"), which is intended to supersede and replace any prior agreements with respect to the subject matter thereof.

NOW THEREFORE this Agreement witnesses that, in consideration of the sum of \$10.00 and in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

### 1. NEGOTIATION OF OPERATING AGREEMENT

1.1 *Termination of Prior Agreements* - The Parties agree the 1957 Agreement and any amendments thereto shall terminate under the following circumstances:

- (a) Upon application being made to the British Columbia Utilities Commission (the "**BCUC**") under section 1.2, the 1957 Agreement and any amendments thereto



shall be terminated effective from the day prior to the effective date of the BCUC order specifying the manner and terms of FortisBC's use of Highways and Municipal Properties; or

- (b) If, after the filing of an application under section 1.2 of this Agreement, the BCUC determines it has no jurisdiction, the 1957 Agreement and any amendments thereto shall terminate on the earlier of the 10<sup>th</sup> day following such determination by the BCUC or on the date of the re-submission of an application contemplated under this section, to enable the BCUC to have jurisdiction and make an order specifying the manner and terms of FortisBC's use of Highways and Municipal Properties.

In the event of such a determination by the BCUC, the parties shall within 10 days of the BCUC's determination, re-submit the application(s), and in conjunction with such application(s), the City shall, if sought by FortisBC, consent to an interim order of the BCUC specifying that:

- (i) FortisBC may continue its use and occupation of Highways and Municipal Properties in the manner it had prior to the application(s) made pursuant to s.1.2 of this Agreement until a final order is made by the BCUC specifying the terms of FortisBC's use of Highways and Municipal Properties (the "**Interim Period**"); and
- (ii) During the Interim Period the parties shall be subject to the jurisdiction of the BCUC.

1.2 *BCUC Application* - The parties shall continue to negotiate the Operating Agreement in good faith and failing agreement shall by May 31, 2017, or by such later date as the parties may agree to in writing (the "**Filing Deadline**"), jointly or separately apply to the BCUC pursuant to s.32 and such other applicable provisions of the *Utilities Commission Act* requesting the BCUC specify the terms of FortisBC's use of the Highways and Municipal Properties.

1.3 *Attornment* - The parties hereby agree to attorn to the jurisdiction of the BCUC and to be bound by any lawful order or decision of the BCUC with respect to the terms of FortisBC's use of the Highways and Municipal Properties. The City of Surrey acknowledges parcels having parcel identifiers 018-138-781 and 003-301-974 are "parks" or "public places" for the purposes of the *Utilities Commission Act*.



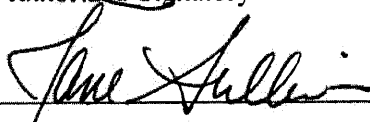
## 2. COASTAL TRANSMISSION SYSTEM PROJECT

2.1 The City of Surrey shall promptly after execution of this Agreement issue the necessary City of Surrey permits and consents to facilitate the installation and construction of FortisBC's Coastal Transmission System Project in accordance with the plans submitted by FortisBC, as may be amended and updated from time to time, and approved by the City of Surrey.

**3. COUNTERPARTS**

This Agreement may be executed by facsimile or other form of electronic communication in one or more separate counterparts, each of which, when so executed, will be deemed to be an original. Such counterparts will, together, constitute and be one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**CITY OF SURREY****FORTISBC ENERGY INC.**  
\_\_\_\_\_  
Authorized Signatory  
\_\_\_\_\_  
Authorized Signatory  
\_\_\_\_\_  
Authorized Signatory\_\_\_\_\_  
Authorized Signatory

*Attachments:*  
*Schedule A - 1957 Agreement*

## **SCHEDULE A**

The 13th day of June, 1957

BETWEEN:

THE CORPORATION OF THE  
DISTRICT OF SURREY  
(hereinafter called  
"the Corporation"),

OF THE ONE PART,

AND

BRITISH COLUMBIA ELECTRIC  
COMPANY LIMITED  
(hereinafter called  
"the Company"),

OF THE OTHER PART.

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AGREEMENT

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THIS AGREEMENT is made the 13th day of June,

1957

SCHEDULE "A"



BETWEEN:

THE CORPORATION OF THE DISTRICT OF  
SURREY  
(hereinafter called "the Corporation"),

OF THE ONE PART,

AND

BRITISH COLUMBIA ELECTRIC COMPANY  
LIMITED  
(hereinafter called "the Company"),

OF THE OTHER PART.

WHEREAS:

A. Section 3 of the "Gas Utilities Act" reads  
as follows:

"3. Every gas utility which at the date when this Act comes into force is carrying on business as such in a municipality or area in unorganized territory shall in such municipality or area, and every gas utility to which a certificate of public convenience and necessity is thereafter granted under the "Public Utilities Act" shall in the municipality or area in unorganized territory mentioned in such certificate, be authorized and empowered to carry on, subject to the provisions of the "Public Utilities Act", its business as a gas utility, and, without limiting the generality of the foregoing, shall be authorized and empowered:-

- (a) To produce, generate, store, mix, transmit, distribute, deliver, furnish, sell, and take delivery of gas;
- (b) To construct, develop, renew, alter, repair, maintain, operate, and use real and personal property for any of the said purposes; and
- (c) To place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances for mixing, transmitting, distributing, delivering,

furnishing, and taking delivery of gas upon, along, across, over, or under any public street, lane, square, park, public place, bridge, viaduct, subway, or watercourse upon such conditions:-

- (i) In a municipality as the gas utility and the municipality may agree upon; and
- (ii) In unorganized territory as the Minister of Highways may approve."

B. The Company has obtained from the Public Utilities Commission of British Columbia a Certificate of Public Convenience and Necessity dated the 13th day of December, 1955 and approved by Order in Council made the 16th day of December, 1955, which Certificate, inter alia, certifies that public convenience and necessity will require the construction and operation by the Company of a project for the supply of natural gas to the public for compensation in the area within the jurisdiction of the Corporation (hereinafter called "the Municipality"), among other places.

C. The parties desire to agree upon the conditions under which the Company may exercise in the Municipality its powers under the "Gas Utilities Act" and the Certificate of Public Convenience and Necessity referred to in Recital "B" hereof.

NOW THIS AGREEMENT WITNESSETH that the parties hereto have mutually agreed as follows:-

1. The Corporation and the Company hereby agree that the conditions upon which the Company may, pursuant to the "Gas Utilities Act" and the said Certificate of Public Convenience and Necessity, place, construct, renew, alter, repair, maintain, remove, operate and use its pipes and other equipment and appliances for

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mixing, transmitting, distributing, delivering, furnishing and taking delivery of gas (which pipes and other equipment - including gas regulating vaults and vents therefrom and cathodic protection equipment - and appliances are hereinafter called "the said works") upon, along, across, over, or under any public street, lane, square, park, public place, bridge, viaduct, subway, or watercourse in the Municipality (all or any of which are hereinafter called "public property") shall be those set out in the paragraphs hereof numbered 2 to 17 and the Corporation hereby consents to the Company undertaking construction or work on or over any public property in the Municipality in compliance with such terms and conditions.

2. Subject to paragraph 3 hereof, before placing or constructing any of the said works on public property, or removing such works, the Company shall submit details thereof in writing to the Corporation's Municipal Engineer. Such details shall include plans and specifications showing the location, size and dimension of the said works. The Company, its servants or agents, shall not proceed with such placing, construction or removal of the said works until the Municipal Engineer shall have approved the proposed works in writing, such approval not to be unreasonably withheld or delayed. If such approval is not acted upon within one (1) year then a new approval shall be obtained. A copy of all plans or construction details approved by the Municipal Engineer hereunder will be supplied by the Company to the Corporation. The Company will, as soon as it is available, supply to the Corporation's Municipal Engineer details of the Company's construction program

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in the Municipality for 1957.

3. The Company may from time to time without submitting details to or obtaining the approval of the Municipal Engineer but subject to paragraph 8 hereof

- (1) open up any public property for the purpose of carrying out repairs and maintenance to any part of the said works, and
- (11) place and construct on public property gas service pipes (including valves) from its mains to the premises of its customers; but the Company shall place and construct such service pipes in accordance with any reasonable written instructions, either of general or particular application, that the Municipal Engineer may from time to time give to the Company and shall, if so required in writing by the Municipal Engineer, supply to the Municipal Engineer each month a list of addresses of premises to which service pipes shall have been so placed and constructed during the preceding month. In each case the location of service pipes will be indicated by either a valve box or a description or plan filed with the Municipal Engineer.

4. Upon the written request of the Corporation or the Municipal Engineer on its behalf, the Company shall change the location (which in the case of pipe means any

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change of either or both of line and elevation) of any part of the said works on public property to some other reasonable location on public property, and shall carry out each such change with reasonable speed.

5. (a) If the part of the said works of which the location is changed as provided in paragraph 4 hereof was (i) installed as to both line and elevation in accordance with the approval or instructions in writing of the Municipal Engineer, or (ii) was installed as to line in accordance with the approval or instructions in writing of the Municipal Engineer and was laid at a depth of at least eighteen inches under a roadway paved with at least two inches of concrete or asphalt, or (iii) was installed as to line in accordance with the approval or instructions in writing of the Municipal Engineer and is being changed because its line is no longer satisfactory to the Corporation, the Corporation shall bear and pay to the Company the entire cost of the change less an amount equal to two (2) per cent of the installed value on the Company's books of any of the said part of the said works which the Company takes out of service as a result of the change multiplied by the number of years during which it has been in service. Provided, however, that notwithstanding that the said part of the said works was installed, or installed and laid, in one of the manners specified, if at any time the Corporation requires the Company to alter the elevation of any part of the said works to facilitate the laying, construction or operation of either storm or sanitary sewer pipes by not more than one half of the outer diameter of the storm or sanitary sewer pipe concerned, plus one half of the outer diameter of the gas pipe concerned, the

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Corporation shall bear and pay to the Company fifty (50) per cent of the sum arrived at by taking from the cost of the change an amount equal to two (2) per cent of the installed value on the Company's books of any of the said part of the said works which the Company takes out of service as a result of the change multiplied by the number of years during which it has been in service.

(b) If the said part of the said works was not installed, or installed and laid, in one of the manners specified in clause (a) of this paragraph, the cost of such change shall be borne by the Company provided that the Company may refer to arbitration pursuant to the "Arbitration Act" the questions (1) whether the circumstances are equitably within the principles exemplified in clause (a) of this paragraph and if the answer is in the affirmative (11) the manner in which the Corporation and the Company shall share the cost of such change. In the arbitration the costs of question (1) shall be borne by the Company and the costs of question (11) shall be dealt with in the usual manner in the award.

6. Notwithstanding anything hereinbefore contained, if either party shall request the other party to make some temporary change in such other party's pipes, equipment, plant or appliances installed on, over, under, or adjacent to, public property in order to facilitate the installation or construction of new pipes, equipment, plant or appliances by the requesting party, such other party shall, if it reasonably can, carry out the change or alteration requested and shall charge the requesting party with the entire cost thereof.

7. Before the Corporation stops up or closes to the public for the benefit of some person or corpor-

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ation other than the Corporation any public property it shall inquire of the Company in writing whether the Company has any of the said works on, over, or under, such public property. If within ten (10) days of receiving such inquiry the Company advises the Corporation in writing that it has any of the said works on, over, or under, such public property, the Corporation shall not so stop up or close such public property until the Company shall have agreed with such person or corporation for the removal, abandonment, or relocation, of the said works at the expense of such person or corporation.

8. The Company shall carry out all work done by it on public property pursuant to this agreement substantially in accordance with the details approved pursuant to paragraph 2 hereof (where applicable) and in a manner reasonably satisfactory to the Municipal Engineer, without undue delay, in a good and workmanlike manner, and so as to cause as little damage and obstruction as practicable, and shall reinstate the paving or surface on public property which it has disturbed in as good a state of repair as it was in prior to its disturbance and in accordance with reasonable specifications laid down by, and subject to the supervision of, the Municipal Engineer. The Company will guarantee such repairs for two years. Except in the case of emergency work the time at which all work is carried out shall be subject to the approval of the Municipal Engineer. The Municipal Engineer shall be given at least twenty-four (24) hours notice (or such lesser notice as he may require) of the proposed time at which any work, other than emergency work, is to be carried out.

9. In the placing, construction, renewal,

alteration, repair, maintenance, removal, operation and use of the said works the Company shall not destroy or damage the property of the Corporation except as it is authorized to do so by this agreement or by the Corporation; but, if at any time the Company does destroy or damage the property of the Corporation, the Company shall bear the cost of repairing the same in such manner as to leave the same in as good a state of repair as it was in prior to the doing of such destruction or damage and to the reasonable satisfaction of the Municipal Engineer.

10. If the Corporation shall destroy or damage any part of the said works on, over, or under, public property which was installed

- (i) before the date hereof and is deemed under paragraph 13 hereof to have been properly placed, constructed, maintained and operated in accordance with this agreement, or
- (ii) after the date hereof either substantially in accordance with the plans and specifications approved by the Municipal Engineer under paragraph 2 hereof, or substantially in accordance with instructions given under paragraph 3 hereof, whichever is applicable,

the Corporation shall bear the cost of repairing the same in such manner as to leave the same in as good a state of repair as it was in prior to the doing of such destruction or damage and to the reasonable satisfaction of the Company. In all other cases the cost of repairing such de-

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struction or damage shall be borne by the Company.

11. The Company agrees that it will indemnify and save the Corporation harmless against and from all loss, costs, damages, expenses, suits, demands, actions, claims and liabilities of every kind (other than such as are caused by or arise from any wilful act of the Corporation or act of the Corporation amounting to negligence on the part of the Corporation) caused by or arising out of the Company placing, constructing, renewing, altering, repairing, maintaining, removing, operating or using any of the said works upon, along, across, over or under any public property.

12. The parties hereto agree from time to time to execute such further assurances, approvals and consents as may be necessary to carry out the intent of this agreement.

13. The Corporation agrees that all the said works heretofore placed, constructed, maintained and operated within the Municipality shall be deemed to have been properly placed, constructed, maintained and operated in accordance with this agreement and that the Company may exercise its said powers in respect of them subject to the terms of this agreement so far as they are applicable thereto.

14. It is hereby mutually agreed that, in the event the Corporation does not have a Municipal Engineer, the Superintendent of Public Works will act in the place and stead of the Municipal Engineer in respect of all matters pertaining to or arising out of this agreement, and in the event the Corporation does not have either a Municipal Engineer or a Superintendent of Public Works, the Municipal Clerk will act in the place and stead of

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the Municipal Engineer or the Superintendent of Public Works in respect of all matters pertaining to or arising out of this agreement.

15. The said works shall be placed, worked upon, or removed, in such manner as not to interfere with any pipe, conduit, wire, duct, manhole, drainage ditch, culvert, or any other structure which shall have been laid down in any public property by the Corporation or under the permission of the Corporation or by virtue of any charter granted by competent authority.

16. The said works and every part of them from time to time placed, constructed or maintained on any public property shall be and remain the property of the Company which shall be entitled at any time to remove the same subject to the terms of this agreement.

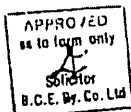
17. This agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

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

The Corporate Seal of the Corporation was affixed hereto in the presence of:

*H. M. Nesbitt*

*A. M. Chester*



The Common Seal of the Company was affixed hereto in the presence of:

*A. J. J. J.*

VICE-PRESIDENT

*G. L. Woodward*

SECRETARY

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (the “**Agreement**”) made to be effective the \_\_\_\_ day of \_\_\_\_\_, 2017,

BETWEEN:

**CITY OF SURREY**, a municipal corporation incorporated under the laws of the Province of British Columbia  
(the “**Municipality**”)

AND:

**FORTISBC ENERGY INC.**, a body corporate duly incorporated under the laws of the Province of British Columbia and having its registered office in the City of Vancouver, in the Province of British Columbia  
(“**FortisBC**”)

### RECITALS:

- A. FortisBC is a public utility pursuant to the *Utilities Commission Act*, R.S.B.C. 1996, c. 473, as amended.
- B. Pursuant to the *Gas Utility Act*, R.S.B.C. 1996, c. 170, as amended and certificates of public convenience and necessity pursuant to the *Utilities Commission Act*, FortisBC is authorised and empowered to construct and operate gas distribution equipment within and which traverse the Boundary Limits of the Municipality, subject to those statutes.
- C. Pursuant to the *Community Charter*, S.B.C. 2003, c. 26, as amended, a municipal council may, by resolution adopt and enter into a licensing and operating agreement.
- D. FortisBC and the Municipality wish to enter into this Agreement with respect to the installation, construction, repair, maintenance, alteration, extension or removal of FortisBC’s natural gas distribution equipment on, along, across, over or under municipal highways and identified properties owned and/or controlled by the Municipality and to clarify and settle the terms and conditions under which FortisBC shall exercise its rights to use such highways and listed properties in conducting its business of distributing natural gas as a public utility within the Boundary Limits of the Municipality.
- E. This Agreement is not intended to cover FortisBC’s occupancy and use of:
  - 1. privately owned lands, or titled lands of the Municipality not identified in Schedule A or which are not Highways;
  - 2. lands of the Municipality over which FortisBC holds a statutory right of way granted by the Municipality;
  - 3. Public Places for any purpose not related to the storage, transmission, distribution or supply of natural gas as a public utility.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that the parties covenant and agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following words and phrases have the meanings set out below and other terms defined within this Agreement will have the meanings so ascribed:

- (a) **“BCUC”** means the British Columbia Utilities Commission or its predecessor or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (b) **“Boundary Limits”** means the boundary limits of the Municipality as they exist from time to time and that determine the area over which the Municipality has control and authority;
- (c) **“Company Facilities”** means any FortisBC Gas Main, High Pressure Pipeline and other equipment and appliances used or intended to be used to convey, test, monitor, distribute, mix, store, measure and deliver natural gas to FortisBC customers, but excludes pipes, equipment and appliances used or intended to be used to convey, test, monitor, distribute, mix, store, compress, measure and deliver: (i) liquefied natural gas, and (ii) natural gas at, or in excess of, 20 MPa for vehicle use;
- (d) **“Emergency Work”** means any work that, in the reasonable opinion of the party carrying out the work, is urgently required to preserve public safety or health or to preserve the safety of Company Facilities or Municipal Facilities, as the case may be, or other property;
- (e) **“FEI Permit”** means a document representing FortisBC’s agreement to construction or other activities of the Municipality for the purposes of section 76(1)(c) of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36, as amended;
- (f) **“Gas Main”** means a natural gas pipe forming part of the Company Facilities operating at less than 700 kPa;
- (g) **“High Pressure Pipeline”** means a natural gas pipeline forming part of the Company Facilities operating at, or in excess of, 700 kPa;
- (h) **“Highway”** means a street, road, lane, bridge, viaduct and any other way open to public use and under the jurisdiction of the Municipality, but excludes a private or statutory right of way on private property;
- (i) **“Laws”** means all laws, statutes, by-laws, rules, regulations, declarations, ordinances, directives, orders, requirements and directions of federal, provincial, municipal, local and other governmental, quasi-governmental or other competent body, authority, department, commission and board, and includes Municipal Specifications;



- (j) **“Maintenance Work”** means any operation, repair, maintenance, inspection or testing of Company Facilities on, along, across, over or under Public Places, and includes vertical relocation of Gas Mains or High Pressure Pipelines, including Service Lines;
- (k) **“Municipal Facilities”** means any facilities and improvements, including Highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, and other equipment, on, along, across, over or under the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (l) **“Municipal Project”** means any installation, relocation, extension or removal of Municipal Facilities, including any infrastructure or Highway widening or construction project, undertaken and financed by the Municipality for a municipal purpose and community benefit; but excludes any installation, relocation, extension or removal of Municipal Facilities where the Municipality is a co-partner or project delivery agent as part of a joint venture or joint development project with any level of government, a provincial or federal crown corporation, a railway or South Coast British Columbia Transportation Authority;
- (m) **“Municipal Specifications”** means the standards and specifications, as may be amended from time to time, established and documented by the Municipality, which may include the degree and nature of traffic control, excavation, backfill, compaction, subsurface structure, surface restoration and landscaping required;
- (n) **“New Work”** means any installation, relocation, extension or removal of Company Facilities on, along, across, over or under Public Places, but excludes Service Line Work, vertical relocation of Gas Mains or High Pressure Pipelines, including Service Lines, and Maintenance Work;
- (o) **“Operating Fee”** has the meaning ascribed to that term in section 12 (*Operating Fee*);
- (p) **“Pipeline Markers”** means post, signage or any means of identification used to show the general location of High Pressure Pipelines;
- (q) **“Planned Facilities”** means those Municipal Facilities and third party facilities not yet constructed but which have been identified by way of documented plans for:
  - (i) the works of the Municipality, or
  - (ii) the works of third parties, where such works are identified by documented plans permitted or approved by the Municipality;
- (r) **“Public Places”** means any Highway and the specified portions of the properties owned and controlled by the Municipality as identified in Schedule A, but excludes any Unopened Road Allowance;
- (s) **“Relocation Costs”** means the costs of a party to:
  - (i) realign, raise, lower, by-pass, relocate or protect the party’s facilities to accommodate the work of the other party;

- (ii) excavate material from around the facilities as needed to complete the work in (i);
- (iii) backfill the material referred to in (ii) and restore the surface; and
- (iv) flush water mains, shut down customer gas supply and customer relights as needed,

and includes administration and overhead charges at rates consistent with the party's policy, or standard rates, for such charges, which rates must be reasonable, on the costs of labour, equipment and materials in items (i), (ii), (iii) and (iv), above, and applicable taxes, but excludes the value or incremental costs of any upgrading and/or betterment of the party's facilities or the facilities of third parties whether or not such upgrading and/or betterment is required to comply with applicable Laws;

- (t) **"Representatives"** means, with respect to each party, personnel employed by or retained by such party, including its officers, employees, directors, contractors, and agents;
- (u) **"Service Line"** means a natural gas pipe or pipeline forming part of the Company Facilities that extends approximately perpendicular for no more than approximately thirty (30) metres from a High Pressure Pipeline or Gas Main to a property line;
- (v) **"Service Line Work"** means any installation, alteration, extension, or removal of Service Lines on, along, across, over or under Public Places;
- (w) **"Third Party Project"** means any work, including any infrastructure or Highway widening or construction project, undertaken and financed by a third party, which is approved by the Municipality, whether or not in the context of a public or private land development project, subdivision or rezoning, and includes a project where the Municipality is a co-partner or project delivery agent as part of a joint venture or joint development project with a third party, including any level of government, a provincial or federal crown corporation, a railway or South Coast British Columbia Transportation Authority;
- (x) **"Unopened Road Allowance"** means a Highway that, as at the execution date of this Agreement and throughout the Term:
  - (i) is not assumed to be and is not generally available for public use as a means of access or passage; and
  - (ii) is undeveloped land or an unconstructed Highway;
- (y) **"Utilities"** means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located on, along, across, over or under Public Places; and
- (z) **"Work"** means any Emergency Work, Maintenance Work, New Work or Service Line Work.

## **1.2 Interpretation**

For the purposes of interpreting this Agreement:

- (a) the headings are for convenience only and are not intended as a guide to interpretation of this Agreement;
- (b) any reference to a specific section, subsection or other subdivision or to a Schedule is to the designated section, subsection or other subdivision of, or the Schedule to, this Agreement, unless the context otherwise requires;
- (c) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (d) in calculating time where the agreement refers to “at least” or “not less than” or “within” a number of days, weeks, months or years, the first and last days must be excluded and where the agreement refers to “at least” or “not less than” or “within” a number of days, Saturdays, Sundays and holidays must be excluded; and
- (e) the word “including”, when following any general term or statement, is not to be construed as limiting the general term or statement to the specific items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

## **2. OBLIGATION TO ACT IN GOOD FAITH**

**2.1** FortisBC and the Municipality acknowledge and agree that they will act in good faith, in carrying out the terms and conditions of this Agreement and within reasonable time frames, carry out the obligations under this Agreement.

**2.2** FortisBC and the Municipality will at all times carry out all work and operations with the due care and attention that is necessary to safeguard the interests of the public, their own employees, and the other party’s employees.

## **3. FORTISBC RIGHTS TO OCCUPY AND USE PUBLIC PLACES**

### **3.1 Occupancy and Use of Public Places**

- (a) This Agreement governs the rights and obligations of the parties with respect to Company Facilities located or proposed to be located on, along, across, over or under Public Places and the conduct of Work by FortisBC in Public Places.
- (b) This Agreement does not apply to or specify rights or obligations of the parties with respect to:
  - (i) privately owned lands, titled lands of the Municipality not identified in Schedule A or which are not Highways, and Unopened Road Allowances;
  - (ii) lands of the Municipality over which FortisBC holds a statutory right of way granted by the Municipality, except to the extent provided in section 9 (*Highway Dedication for Crossings*); and

- (iii) the occupancy and use of Public Places by FortisBC with respect to equipment and appliances used or intended to be used to convey, test, monitor, distribute, mix, store, compress, measure and deliver (i) liquefied natural gas, and (ii) natural gas at, or in excess of, 20 MPa for vehicle use.
- (c) The Municipality hereby acknowledges FortisBC's authority and power, in accordance with and subject to the *Gas Utility Act*, *Utilities Commission Act*, and other applicable Laws, to:
  - (i) operate Company Facilities on, along, across, over or under Public Places;
  - (ii) conduct Work on, along, across, over or under Public Places;
  - (iii) enter on Public Places from time to time as may be reasonably necessary for the purpose of conducting Work and operating the Company Facilities; and
  - (iv) place Pipeline Markers where required;subject to terms and conditions set out in this Agreement.
- (d) FortisBC's occupancy and use of Public Places pursuant to this Agreement shall not unduly interfere with the public use and enjoyment of such Public Places.
- (e) Except to the extent specifically provided in this Agreement, nothing herein contained creates or grants any ownership or property rights in or to the Public Places to FortisBC or in or to the Company Facilities to the Municipality.

### **3.2 Taxes and Utilities**

Nothing in this Agreement will alter or affect the taxes payable by FortisBC, including the taxes payable pursuant to section 644 of the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended, or the payment of the costs of all services and utilities consumed in respect of FortisBC's operations.

### **3.3 Insurance**

- (a) FortisBC shall obtain and maintain throughout the term of this Agreement, the following insurance, from insurers registered in and licensed to underwrite insurance in British Columbia, and provide proof of coverage to the Municipality upon request from time to time:
  - (i) Workers' Compensation Insurance in accordance with the statutory requirements in British Columbia;
  - (ii) For motor vehicles owned and operated by FortisBC and used in the performance of Work in Public Places, motor vehicle insurance coverage providing third party liability and accident benefits insurance with minimum inclusive limits for bodily injury and property damage (third party) of not less than \$2,000,000.00; and

- (iii) Comprehensive General Liability Insurance against claims for bodily injury, death and property damage in the amount of not less than \$5,000,000 per occurrence.
- (b) All such policies shall, to the extent attainable, provide that the insurance shall not be cancelled without the insurer giving at least thirty (30) calendar days' written notice to the Municipality.

#### **4. COMPLIANCE WITH LAWS AND STANDARDS FOR USE OF PUBLIC PLACES**

##### **4.1 Laws and Standards**

- (a) In its occupancy and use of Public Places, including conduct of Work, FortisBC shall conform to sound engineering practices and comply with all applicable Laws, except for any by-laws, orders, standards and policies of the Municipality, including Municipal Specifications, that:
  - (i) conflict with terms of this Agreement or limit any rights, approvals, permits or concessions granted to FortisBC by the Municipality under this Agreement; or
  - (ii) conflict with other Laws governing FortisBC.
- (b) Where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them to FortisBC in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on the owners and operators of other Utilities.

##### **4.2 Provide emergency contacts**

FortisBC will provide the Municipality with a 24 hour emergency contact number which the Municipality will use to notify FortisBC of emergencies including; gas leaks, third party accidents around work sites, ruptures of gas lines, and other potentially hazardous situations.

##### **4.3 Assist with facility locates**

FortisBC will, at no cost to the Municipality, provide locations of its Company Facilities within a time frame as may be reasonably requested by the Municipality, except in the event of an emergency in which case the information shall be provided forthwith. FortisBC shall provide gas locations from FortisBC records.

#### **5. APPROVALS, PERMITS OR LICENSES**

##### **5.1 General Rule**

Except for taxes payable by FortisBC, including the taxes payable pursuant to section 644 of the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended, the payment of the costs of all services and utilities consumed in respect of FortisBC's operations, or as specifically provided in this Agreement,

- (a) the Municipality will not charge or levy, or be entitled to receive from FortisBC, any approval, license, inspection or permit fee, or charge of any other type, or require a deposit or other form of security, that in any manner is related to or associated with FortisBC undertaking Work or operating Company Facilities in any Public Place or in any manner related to or associated with FortisBC exercising the powers and rights granted to it by this Agreement;
- (b) the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses of or from the Municipality for FortisBC's occupancy and use of Public Places, including undertaking Work, pursuant to this Agreement; and
- (c) FortisBC will not charge or levy, or be entitled to receive from the Municipality, any approval, license, inspection or permit fee, or charge of any other type, or require a deposit or other form of security, that in any manner is related to or associated with the Municipality undertaking work on or operating Municipal Facilities in any Public Place or in any manner related to or associated with the Municipality exercising the powers and rights granted to it by this Agreement.

## **5.2 Approval for New Work**

- (a) FortisBC shall be required to apply for and obtain approval from the Municipality for New Work, and not for Emergency Work, Maintenance Work, including vertical relocations, or Service Line Work.
- (b) FortisBC shall submit an application to the Municipality's Engineering Department for approval when FortisBC intends to undertake New Work. The application shall include:
  - (i) a plan and specifications showing:
    - 1. the size and dimensions of the Company Facilities and the proposed location of the Company Facilities, or, in the event of removal, the location of the Company Facilities to be removed, relative to property lines and/or edge of pavement;
    - 2. the proposed location and offsets of the Company Facilities where the Company Facilities cross existing Utilities of the Municipality, provided such locations and offsets are made available to FortisBC by the Municipality;
    - 3. the proposed elevations and clearances of Utilities for Gas Mains having a nominal diameter greater than 219 mm (8 inches), if requested by the Municipality, and for all High Pressure Pipelines, provided such locations are made available to FortisBC by the Municipality or owner of such Utilities;
    - 4. the location of any trees greater than 0.3 meters in diameter at approximately 1.4 meters above the ground level, wetlands, water bodies or other areas of special environmental sensitivity, or areas designated by the Province of British Columbia or by the

Municipality as heritage sites, which will likely be impacted by the New Work; and

5. boundaries and civic addresses of any private lands abutting the New Work;
- (ii) FortisBC's plans for the restoration of the Public Places affected by the New Work, including the material that will be used to backfill the trench, if different from those set out in the applicable of section 6.3 (*Restoration and Maintenance*) and section 6.4 (*Depth of Cover*);
- (iii) the name of a FortisBC representative who may be contacted for more information;
- (iv) projected commencement and completion dates; and
- (v) such other information relevant to the New Work as the Municipality may reasonably request from time to time.
- (c) Subject to subsection (d) below, the Municipality shall use commercially reasonable efforts to grant approval to FortisBC for the New Work within ten (10) days of receipt of FortisBC's application, except that in the case of large and complex New Work, the Municipality may, by notice to FortisBC extend the time for response by a maximum of ten (10) days.
- (d) The Municipality will not refuse to grant approval, except on the following grounds:
  - (i) the proposed location or design of the Company Facilities or the New Work:
    1. conflicts with existing Utilities, Municipal Facilities, existing third party facilities or Planned Facilities; or
    2. unduly interferes with the public's existing use and enjoyment of those properties identified in Schedule A, where the proposed New Work is within the specific portions of the properties identified in Schedule A; or
    3. conflicts with trees greater than 0.3 meters in diameter at approximately 1.4 meters above the ground level, wetlands, water bodies or other areas of special environmental sensitivity, or areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
    4. is likely to compromise public safety; or
    5. does not conform with applicable Laws provided such Laws exclude any by-laws, orders, standards and policies of the Municipality, including Municipal Specifications, that conflict with terms of this Agreement; or

- (ii) the Municipality intends within the next one hundred and eighty (180) days to undertake work in the same location and wishes to co-ordinate both work, and FortisBC can delay the New Work without compromising the supply, capacity or safety of the Company Facilities or its customers' need for gas service; or
- (iii) FortisBC has not provided the Municipality with the information required by subsection (b) above;

and shall provide FortisBC with grounds for its refusal to grant approval and shall use commercially reasonable efforts to do so within ten (10) days after receiving FortisBC's application, except in the case of large and complex New Work, the Municipality may, by notice to FortisBC extend the time for response by a maximum of ten (10) days.

- (e) The Municipality may:
  - (i) require FortisBC to provide the public with reasonable notice of the New Work; and
  - (ii) include conditions in its approval that,
    - 1. address the matters set out in subsection (d) above; and
    - 2. require a greater depth of cover and alternate backfill material to accommodate Planned Facilities, when FortisBC has applied for approval to install or relocate a Gas Main or High Pressure Pipeline in the location of Planned Facilities,provided that any such conditions shall be of no force and effect to the extent such conditions are inconsistent with the terms of this Agreement.

### **5.3 Permits for Work**

- (a) When FortisBC intends to undertake:
  - (i) New Work; or
  - (ii) Maintenance Work, including vertical relocations, or Service Line Work, which is on, or obstructs traffic on or from, an arterial road or collector road identified in City of Surrey By-law No. 8830, as amended,

FortisBC shall submit an application or applications to the Municipality's Engineering Department for the applicable of the following permits:

- (i) a City Road and Right-of-Way Use Permit under City of Surrey By-law No. 13007, as amended;
- (ii) a Traffic Obstruction Permit under City of Surrey By-law No. 13007, as amended;
- (iii) an Erosion and Sediment Control Permit under City of Surrey By-law No. 16138, as amended; and



- (iv) a Building Permit under City of Surrey By-law No. 17850, as amended.
- (b) The Municipality shall use commercially reasonable efforts to issue the applicable permit(s) to FortisBC within ten (10) days of receipt of FortisBC's application and shall not refuse to grant the applicable permit(s) provided FortisBC has provided the Municipality with the information required by the respective City of Surrey By-law.
- (c) Where FortisBC performs Work for which a Traffic Obstruction Permit is not required or has been waived by the Municipality, FortisBC will, to the extent practicable, comply with the Ministry of Transportation's Traffic Control Manual for Work on Roadways, as amended, while undertaking the Work.

#### **5.4 Notice for Maintenance Work and Service Line Work on Local Roads**

Prior to conducting Maintenance Work or Service Line Work that requires the cutting of concrete and/or asphalted Highway surfaces and for which FortisBC is not required to obtain approval or permits from the Municipality under this Agreement, FortisBC shall provide at least two (2) days prior written notice of such work to the Municipality. After receiving such notice, the Municipality may:

- (a) advise FortisBC of any other person(s) undertaking work or using the Highway at the location of FortisBC's work in a manner that could conflict with FortisBC's work, provided the Municipality has notice of such other activities, to enable FortisBC to coordinate its work with such other person(s); and
- (b) require FortisBC to provide the public with reasonable notice of such FortisBC work.

#### **5.5 Exception for Emergency Work**

Where FortisBC is required to carry out Emergency Work, FortisBC shall not be required to give notice to the Municipality or to the public, or obtain municipal permits or approvals prior to undertaking the Emergency Work, but shall give notice to the Municipality as soon as practicable.

#### **5.6 Failure to Receive Approval or Permit**

If the Municipality:

- (a) fails to provide FortisBC with a permit or approval within the timelines set out in sections 5.2(c) (*Approval for New Work*) or 5.3(b) (*Permits for Work*); or
- (b) notifies FortisBC that the Municipality objects to the New Work pursuant to section 5.2(d) (*Approval for New Work*),

FortisBC may refer the matter to dispute resolution in accordance with section 17 (*Dispute Resolution*). If such dispute is resolved in favour of requiring issuance of an approval or permit(s), the Municipality will promptly issue the applicable approval or permit(s) to FortisBC. Except for Emergency Work, FortisBC shall not proceed with the Work until the Municipality provides FortisBC with the permit(s) and approval(s)

required under this Agreement for such Work including a permit or an approval issued as a result of the resolution of a dispute by the parties.

#### **5.7 Expiry of Permit or Approval**

An approval or permit issued by the Municipality will expire if FortisBC does not carry out the applicable Work within one hundred and eighty (180) days of the issuance date.

### **6. FORTISBC WORK OBLIGATIONS**

#### **6.1 No Nuisance or Damage**

- (a) FortisBC shall perform its Work, and maintain Company Facilities located on, along, across, over or under Public Places, in a manner that does not unreasonably interfere with or damage other pre-existing support structures, Utilities, Municipal Facilities, equipment, facilities or improvements located within or abutting Public Places.
- (b) FortisBC shall not leave any part of the Company Facilities located on, along, across, over or under Public Places in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair.
- (c) FortisBC shall keep its Work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of the Work.

#### **6.2 Pavement Cuts**

If FortisBC is required to cut asphalt or concrete surfaces on a Public Place, such cuts will be limited to less than 1.5 meters in width unless in the reasonable opinion of FortisBC a larger excavation is warranted due to the depth or size of the pipe or requirements of applicable Laws.

#### **6.3 Restoration and Maintenance**

- (a) Where FortisBC has performed any Work, FortisBC shall restore the affected portion of the Public Place to applicable Municipal Specifications without unreasonable delay and return such portion of the Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. Despite the foregoing, FortisBC shall, if required by the Municipality, make a temporary repair to accommodate Planned Facilities, and shall pay to the Municipality the estimated difference between the cost of a permanent repair and the cost of the temporary repair as agreed between the parties. In such event, the permanent repair shall be undertaken by the Municipality and FortisBC shall have no further restoration or maintenance obligations with respect to such affected portion of the Public Place.
- (b) If FortisBC has cut asphalt or concrete surfaces on a Public Place, FortisBC shall be responsible for repairs and maintenance of such pavement restoration for a period of one (1) year, except where the pavement restoration work has been conducted by the Municipality, including on FortisBC's behalf.

#### **6.4 Depth of Cover**

FortisBC may install Gas Mains and High Pressure Pipelines with a greater depth of cover than required by applicable Laws or industry standards: (i) to accommodate the presence of other Utilities; (ii) upon mutual agreement with the Municipality on a case by case basis to address site specific requirements or conditions; or (iii) when recommended by an engineering assessment.

#### **6.5 Repair Damage to Municipal Facilities**

To the extent that any of the Work being done by FortisBC results in damage to Municipal Facilities or Public Places, other than the usual physical disruption to Public Places caused by the installation of Company Facilities that FortisBC shall restore in accordance with section 6.3 (*Restoration and Maintenance*), FortisBC will, as soon as practicable, provide notice to the Municipality of such damage and either repair such damage or reimburse the Municipality for its reasonable costs of repairing such damage.

#### **6.6 Conformity Requirement**

- (a) FortisBC shall carry out Work in conformity with the applicable permit or approval.
- (b) FortisBC may make in-field design changes when carrying out New Work to accommodate field conditions which could not have been reasonably foreseen by FortisBC. If such in-field conditions materially impact FortisBC's plans for restoration or materially change the impact of the New Work on Municipal Facilities and/or Utilities relative to the information FortisBC submitted to the Municipality pursuant to sections 5.2(b) (*Approval for New Work*) or 5.3(a) (*Permits for Work*), as applicable, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality of the proposed changes to the New Work and the reasons for them, and obtain written consent of the Municipality to the proposed changes prior to continuing the New Work. The Municipality shall not refuse to grant consent or condition its consent, except on the grounds set out in section 5.2(d)(i) (*Approval for New Work*).
- (c) If Company Facilities installed on, along, across, over or under Public Places are later found not to be located in compliance with, or within 0.3 metres of the alignment set out in, the applicable approval obtained pursuant to section 5.2 (*Approval for New Work*), as may be modified during the course of New Work pursuant to subsection (b) above, then FortisBC will be responsible for any alteration or upgrading required to bring such Company Facilities into compliance. FortisBC shall not be responsible for non-compliance which arose subsequent to FortisBC's completion of New Work.

#### **6.7 Prime Contractor**

- (a) FortisBC shall act as the prime contractor for all Work, or designate in writing its contractor to act as the prime contractor, within the meaning of section 118 of

the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, unless otherwise designated in writing by the Municipality or a third party working in the applicable Public Place.

- (b) If FortisBC intends to undertake Work in a Public Place and a third party or third parties are working at the location of FortisBC's intended workplace, FortisBC shall not proceed with its Work until it has a written agreement with the third party or third parties designating the prime contractor for the workplace and ensuring the activities of all parties relating to occupational health and safety are coordinated in compliance with Part 5 of the *Workers Compensation Act* and regulations thereunder.

## **6.8 Responsibility for Work**

Except as otherwise provided in this Agreement, including section 8.2 (*Changes to Company Facilities*), FortisBC shall be responsible for the Work, including the costs thereof.

## **7. CLOSURE OR EXPROPRIATION OF PUBLIC PLACES**

### **7.1 Closure of Public Places**

The parties acknowledge and agree that sections 40 and 41 of the *Community Charter* apply to the closure of Public Places.

### **7.2 Expropriation**

If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove Company Facilities then the Municipality shall as soon as practicable notify FortisBC of the expropriation. This provision is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.

## **8. CHANGES TO FACILITIES**

### **8.1 Changes to Municipal Facilities**

- (a) If FortisBC plans to undertake New Work, Maintenance Work or Service Line Work that might require Municipal Facilities to be realigned, raised, lowered, protected, by-passed, or relocated to accommodate the work, FortisBC may submit details of its planned work and request that the Municipality provide an estimate of its Relocation Costs to accommodate FortisBC's work.
- (b) The Municipality shall provide the requested Relocation Costs estimate and a detailed description of the required changes to the affected Municipal Facilities to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of such request.
- (c) The Municipality shall not proceed with the changes to Municipal Facilities identified pursuant to subsection (b) above until it receives: (i) written confirmation in the form of a purchase order from FortisBC that the undertaking

contemplated in subsection (a) above will be proceeding, and (ii) an FEI Permit in respect of such changes, if applicable.

- (d) If FortisBC provides written confirmation pursuant to subsection (c) above, the Municipality shall use commercially reasonable efforts to promptly apply to FortisBC for an FEI Permit if applicable and, upon receipt of such FEI Permit, shall make such changes to the affected Municipal Facilities with reasonable speed and dispatch.
- (e) FortisBC agrees to reimburse the Municipality for its Relocation Costs.

## **8.2 Changes to Company Facilities**

- (a) If the Municipality requests that FortisBC realign, raise, lower, protect, by-pass, or relocate Company Facilities to accommodate a Third Party Project, FortisBC shall use commercially reasonable efforts to apply to the Municipality for approval pursuant to section 5.2 (*Approval for New Work*) and permit(s) pursuant to section 5.3 (*Permits for Work*), if applicable, in a timely manner, and upon receipt of such approval and permit(s) shall make such changes to the affected Company Facilities in coordination with the work schedule of the Third Party Project. The recoverability or allocation of FortisBC costs will be determined in accordance with applicable Laws or as otherwise negotiated between FortisBC and the third party or parties undertaking the Third Party Project.
- (b) If the Municipality plans to undertake a Municipal Project that might require Company Facilities to be realigned, raised, lowered, protected, by-passed, or relocated to accommodate the work, the Municipality may submit details of its planned work and request that FortisBC provide an estimate of its Relocation Costs to accommodate the Municipality's work, and,
  - (i) FortisBC shall provide the requested Relocation Costs estimate and a detailed description of the required changes to the affected Company Facilities to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of such request;
  - (ii) FortisBC shall not proceed with such changes to Company Facilities until:
    - (A) FortisBC has received written confirmation from the Municipality that the Municipality has received an FEI Permit pursuant to section 13(b) (*Municipal Work*) or approval of the Oil and Gas Commission, as applicable, for the construction of the Municipal Project contemplated in subsection (b) above and confirmation in the form of a purchase order from the Municipality that the Municipal Project will be proceeding, and
    - (B) FortisBC has received applicable approval(s) and permit(s) from the Municipality pursuant to sections 5.2 (*Approval for New Work*) and 5.3 (*Permits for Work*);
  - (iii) if the Municipality provides written confirmation pursuant to subsection (ii) above, FortisBC shall use commercially reasonable efforts to promptly

apply to the Municipality for applicable approval(s) and permit(s) under this Agreement and, upon receipt of such approval(s) and permit(s), shall make such changes to the affected Company Facilities with reasonable speed and dispatch.

- (c) The Municipality agrees to pay a contribution to the Relocation Costs incurred by FortisBC to accommodate a Municipal Project and such contribution shall be calculated in accordance with subsection 3(3) or 3(4) of the *Pipeline Crossings Regulation* (B.C. Reg. 147/2012), as applicable, whether the affected Company Facilities are High Pressure Pipelines or Gas Mains.

### **8.3 Estimation of Costs**

The Relocation Costs estimates to be provided pursuant to sections 8.1(b) (*Changes to Municipal Facilities*) and 8.2(b)(i) (*Changes to Company Facilities*) shall contain sufficient detail to enable the party that requested the estimate to assess the reasonableness of the estimate, and shall identify:

- (a) the scope of work, including descriptions of the main tasks to be performed;
- (b) costs of each of the main tasks to be performed;
- (c) administration and overhead charges if not included in the costs under subsection (b) above; and
- (d) applicable taxes.

### **8.4 Notification of Costs, Invoicing and Payment**

- (a) If, during the course of undertaking requested changes to its facilities pursuant to this section 8 (*Change to Facilities*), a party determines that the actual Relocation Costs to make such changes will exceed the Relocation Costs estimate provided pursuant to section 8.1(b) (*Changes to Municipal Facilities*) or section 8.2(b)(i) (*Changes to Company Facilities*), as applicable, by more than the greater of \$5,000.00 or ten (10%) percent, such party shall:
  - (i) promptly notify the other party and provide a revised Relocation Costs estimate and a detailed description of the facts giving rise to the increase in costs;
  - (ii) not proceed with further work on the requested changes until the other party has provided written confirmation to proceed;
  - (iii) undertake such actions as are necessary to make the workplace safe, clean and tidy; safeguard the interests of the public; and restore any interrupted Utilities including natural gas service; and
  - (iv) if the other party provides written confirmation cancelling the requested changes, restore the affected portion of the Public Place to applicable Municipal Specifications without unreasonable delay and return such

portion of the Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity.

- (b) Upon completion of the requested changes to its facilities or cancellation pursuant to subsection (a)(iv) above, the party shall issue an invoice to the other party of the amount of Relocation Costs to be paid by the other party in accordance with section 8.1(e) (*Changes to Municipal Facilities*) or section 8.2(c) (*Changes to Company Facilities*) as applicable, and provide sufficient detail to enable the other party to assess the reasonableness of the Relocation Costs and any changes from the original Relocation Costs estimate, including:
  - (i) the time period during which the costs were incurred;
  - (ii) descriptions of the main tasks performed, including any changes to scope from the original Relocation Costs estimate provided; and
  - (iii) a breakdown of the Relocation Costs by own workforce labour, vehicles / equipment, materials, and contractor costs.
- (c) FortisBC shall provide to the Municipality, and promptly provide any revisions to, a schedule of FortisBC's rates for administration and overhead charges, and the Municipality shall keep such schedule of rates confidential in accordance with section 18.9 (*Confidentiality*).
- (d) All payments due and owing pursuant to this section 8 (*Changes to Facilities*) shall be made within thirty (30) days of the day the invoice is received, without deduction or set-off. Late payments shall be subject to interest at the rate consistent with the invoicing party's policy for charging for late payments, which rate must be reasonable.
- (e) If a party disputes an invoice provided by the other party, in whole or in part, the party shall notify the other party of the dispute. Any undisputed amount(s) of the invoice shall be paid while the parties review and validate the disputed amount.
- (f) Where the parties are unable to reach agreement as to a disputed amount, the parties may refer the matter to dispute resolution under section 17 (*Dispute Resolution*).
- (g) If a party has not disputed an invoice provided by the other party under subsection (b) above within ninety (90) days of receipt of such invoice, then the invoice shall be deemed to be accepted and binding on the parties.

## **9. HIGHWAY DEDICATION FOR CROSSINGS**

- (a) If the Municipality intends to create or widen a Highway, or requires as a condition of subdivision, rezoning and/or development approval that a Highway be created or widened, on or through lands over which FortisBC holds a statutory right of way and the proposed new or widened Highway crosses or overlaps a portion of FortisBC's statutory right of way area, then, at the request

of the Municipality and provided the Highway project is proceeding, FortisBC agrees to release its statutory right of way interest in the portion of the statutory right of way area required for the Highway without requiring the Municipality to exercise its rights of expropriation. FortisBC shall use commercially reasonable efforts to execute the necessary plans and other documents provided by the Municipality, including subdivision and/or road dedication plans, within ten (10) days of receipt of such documents from the Municipality, all at no cost to the Municipality and without compensation payable to FortisBC.

- (b) FortisBC further agrees to use commercially reasonable efforts to obtain the necessary consents, releases or discharges from any of its mortgagees or chargeholders holding an interest in the statutory right of way or in the affected statutory right of way area under subsection (a) above, all at no cost to and without compensation payable by the Municipality.

## **10. JOINT PLANNING, COOPERATION AND COORDINATION**

### **10.1 Conduct of Construction and Maintenance Activities**

The Municipality and FortisBC agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that has regard to the effect that such activities may have on the other party and other users of Public Places. Such reasonable efforts shall include attending planning, safety and construction meetings at the request of the other party and reducing, as much as is practical, the obstruction of access to Public Places and interference with the facilities and activities of others in Public Places.

### **10.2 Mapping Information**

- (a) The Municipality shall supply to FortisBC, at no cost, all record drawings and pertinent information it has for Municipal Facilities.
- (b) FortisBC shall supply to the Municipality, at no cost, all record drawings and pertinent information it has for Company Facilities located on, along, across, over or under Public Places, including abandoned facilities.
- (c) The parties shall co-operate to improve their mapping systems so they are compatible, provide the necessary information and are easily accessible to both parties.

### **10.3 Other Assistance**

The Municipality shall use commercially reasonable efforts to assist FortisBC in FortisBC's efforts to reduce instances of residences being built over Company Facilities.



## **11. INDEMNITY AND LIMITATIONS OF LIABILITY**

### **11.1 Indemnity by FortisBC**

- (a) FortisBC indemnifies and protects and saves the Municipality harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property caused by FortisBC in:
  - (i) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on, along, across, over or under any Public Places;
  - (ii) any breach of this Agreement by FortisBC;except to the extent contributed by negligence or default of the Municipality or the Municipality's Representatives.
- (b) This indemnity expressly extends to all acts and omissions of FortisBC's Representatives.

### **11.2 Indemnity by Municipality**

- (a) The Municipality indemnifies and protects and saves FortisBC harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property to the extent caused by the Municipality in:
  - (i) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on, along, across, over or under any Public Places;
  - (ii) any breach of this Agreement by the Municipality,except to the extent contributed by the negligence or default of FortisBC or FortisBC's Representatives.
- (b) This indemnity expressly extends to all acts and omissions of the Municipality's Representatives.

### **11.3 Limitations on Municipality's Liability**

All property of FortisBC kept or stored on the Public Places will be kept or stored at the risk of FortisBC. For further certainty, FortisBC acknowledges that the Municipality has made no representations or warranties as to the state of repair or the suitability of the Public Places for any business, activity or purpose whatsoever. FortisBC accepts its use of Public Places on an "as is" basis.

### **11.4 No Liability for Approval of Drawings and Plans**

The Municipality shall not be liable to FortisBC as a result only of the Municipality's approval of drawings and plans submitted by FortisBC to the Municipality pursuant to this Agreement.

### **11.5 Limitation of Liability**

Except as otherwise specifically provided for in sections 8 (*Changes to Facilities*), 11.1 (*Indemnity by FortisBC*) and 11.2 (*Indemnity by Municipality*), neither party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for economic loss, business loss, loss of profits, delay costs, stand-by costs or for failure to realize expected profits, howsoever caused or contributed to, in connection with this Agreement or non-performance of its obligations hereunder.

## **12. OPERATING FEE**

### **12.1 Fee Calculation**

Provided that FortisBC is permitted to collect the Operating Fee from customers within the Boundary Limits and effective commencing from the date established by the BCUC, FortisBC agrees to pay to the Municipality on an annual basis, a fee (the “**Operating Fee**”) of three percent (3%) of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits, other than gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale.

### **12.2 Change to Boundary Limits**

FortisBC will, upon receipt of written notice from the Municipality of an expansion to the Boundary Limits, collect the Operating Fee from the applicable customers in the expanded Boundary Limits effective the date that is the later of the date of actual change to the Boundary Limits or thirty (30) days after receipt of notice from the Municipality.

### **12.3 Payment Date and Period**

FortisBC will pay the Operating Fee to the Municipality annually by the first day of March of each year calculated with respect to the preceding calendar year.

### **12.4 BCUC Decision or Provincial Legislation**

If a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the Operating Fee being paid to the Municipality by more than +/- 5% annually, the parties shall negotiate a new Operating Fee formula which best reflects the amount paid to the Municipality under this Agreement. The parties acknowledge a change to BCUC’s decision that FortisBC shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the “Business Rules for Commodity Unbundling” dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the Operating Fee being paid to the Municipality.

### **13. MUNICIPAL WORK**

- (a) FortisBC will be entitled to appoint, at its cost, a representative to inspect any construction, maintenance or repair activity undertaken by the Municipality over or around Company Facilities. The provisions of this section do not relieve the Municipality of its responsibilities under all applicable Laws, including the *Gas Safety Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- (b) If the Municipality plans to undertake construction or other activities that are subject to section 76(1) of the *Oil and Gas Activities Act*, and the Municipality applies to FortisBC for an FEI Permit in respect of the construction or other activities, FortisBC shall use commercially reasonable efforts to issue the FEI Permit to the Municipality within ten (10) days of receipt of the Municipality's request, except in the case of large and complex work, FortisBC may, by notice to the Municipality, extend the time for response by a maximum of ten (10) days. Any terms and conditions of such permit shall be of no force and effect to the extent such terms and conditions are inconsistent with the terms of this Agreement.
- (c) If the Municipality removes, covers or obstructs Pipeline Markers, the Municipality shall promptly provide notice to FortisBC to enable FortisBC to replace such Pipeline Markers.
- (d) The Municipality shall provide notice to FortisBC of any damage to Company Facilities located on, along, across, over or under Public Places, caused by any work being done by the Municipality and pay FortisBC its reasonable costs to repair such damage. Where such damage results directly from inaccurate or incomplete information supplied by FortisBC, and the Municipality has complied with all applicable Laws, and with instructions supplied by FortisBC, then the cost of repairing the damaged Company Facilities will be at the expense of FortisBC.

### **14. CESSATION OF USE OF COMPANY FACILITIES**

#### **14.1 Removal or Abandonment**

If FortisBC intends to permanently cease use of Company Facilities located on, along, across, over or under Public Places, FortisBC shall promptly notify the Municipality of its plans for such Company Facilities, provided that:

- (a) FortisBC shall remove Company Facilities located above ground; and
- (b) FortisBC may, in its discretion, remove or leave in place underground Company Facilities.

#### **14.2 Continuing Obligations and Responsibility**

- (a) FortisBC shall fill any pipes forming part of Company Facilities left in place which have a nominal diameter greater than 323 mm (12 inches) with sand, controlled density fill or similar material to prevent their collapse.

- (b) If the Municipality reasonably determines that Company Facilities left in place must be removed to accommodate Municipal Projects, Third Party Projects or Utilities, the Municipality may by written notice to FortisBC require FortisBC to remove such Company Facilities, provided that:
  - (i) FortisBC shall coordinate the removal of such Company Facilities with the Municipality;
  - (ii) FortisBC shall obtain the applicable approvals and permits under this Agreement; and
  - (iii) FortisBC shall be responsible for the costs of removing and disposing the Company Facilities, but excluding the costs of excavation, backfilling and surface restoration.
- (c) FortisBC shall continue to own and be responsible for any Company Facilities left in place. This section 14 (*Cessation of Use of Company Facilities*) does not relieve FortisBC of its responsibilities under all applicable Laws with respect to Company Facilities left in place.

## **15. TERM, TERMINATION AND CONTINUITY**

### **15.1 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and/or operating agreements between the Municipality and FortisBC with respect to the subject matter of this Agreement, including the Natural Gas Distribution Agreement dated June 13, 1957, are terminated as at the effective date of this Agreement.

### **15.2 Term of Agreement**

This Agreement shall have a term of twenty (20) years commencing on the date it is made effective as first set out above, and after the initial twenty (20) year term shall continue indefinitely unless terminated in accordance with section 15.3 (*Termination of Agreement*).

### **15.3 Termination of Agreement**

- (a) Either party may terminate this Agreement by providing the other party with at least ninety (90) days written notice of termination if the BCUC orders that FortisBC is not authorized to recover the Operating Fee from its customers.
- (b) The Municipality may terminate this Agreement by providing FortisBC with at least twenty-four (24) hours written notice of termination if FortisBC becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*.
- (c) Either party may terminate this Agreement by providing the other party with written notice of termination if the other party breaches any term, provision or

obligation hereunder and such breach is a material breach and has not been cured within sixty (60) days of receipt of notice of such breach. A party will not be considered to be in material breach if the party has sought resolution of such matter through the Dispute Resolution process under section 17 (*Dispute Resolution*) and the outcome of which is pending.

- (d) Either party may terminate this Agreement in accordance with section 16.2(b) (*Changes to Laws*).
- (e) After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other party not less than one (1) year's written notice of termination.

#### **15.4 Negotiations on Termination or Expiry of this Agreement**

Upon one party giving notice to the other party of termination of this Agreement:

- (a) the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which FortisBC may occupy and use the Public Places, and if such negotiations break down and in the opinion of one or other of the parties acting in good faith settlement is unlikely, either party may apply to the BCUC to establish the terms and conditions applicable to FortisBC's continued occupancy and use of the Public Places; and
- (b) FortisBC will, with the support of the Municipality, take such steps necessary to seek BCUC approvals on an interim basis of the extension of terms and conditions of this Agreement during negotiations of a new agreement, provided that if FortisBC is no longer authorized to recover the Operating Fee from its customers, the Municipality shall be free to apply to the BCUC for substitute terms and conditions related to compensation, cost allocations, indemnity and liability and to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.

### **16. ACCOMMODATION OF FUTURE CHANGES**

#### **16.1 Outsourcing of Infrastructure Management**

If the Municipality assigns the task of infrastructure management to a third party the Municipality will ensure that:

- (a) its contracts for such infrastructure management contain provisions that will allow the Municipality to meet its obligations under and to comply with the terms and conditions of, this Agreement, and
- (b) FortisBC will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with FortisBC so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

## **16.2 Changes to Laws**

If the provisions of any applicable Laws, affecting the rights, powers and/or entitlements of either of the parties in respect of matters dealt with in this Agreement, including the *Community Charter*, the *Gas Utility Act* or the *Utilities Commission Act*, as the case may be, change in such a way as to materially, in the opinion of the affected party, affect such rights, powers and/or entitlements,

- (a) the affected party may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the other party agrees to negotiate such terms; and
- (b) failing satisfactory resolution of the new agreement terms either of the parties may terminate this Agreement by providing the other party not less than ninety (90) days written notice of termination.

## **17. DISPUTE RESOLUTION**

### **17.1 Mediation**

Where any dispute arises out of or in connection with this Agreement, including failure of the parties to reach agreement on any matter arising in connection with this Agreement after escalation to senior management, the parties agree to try to resolve the dispute by participating in a structured mediation conference with a mediator under the Rules of Procedure for Commercial Mediation of The Canadian Foundation for Dispute Resolution.

### **17.2 Referral to the BCUC, OGC or Arbitration**

If the parties fail to resolve the dispute through mediation or if the meditation has not taken place within thirty (30) days of a party providing a written request to the other party to mediate, the unresolved dispute shall be referred to the BCUC or the Oil and Gas Commission, as the case may be, if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC or the Oil and Gas Commission, such unresolved dispute shall be referred to, and finally resolved or determined by arbitration under the Rules of Procedure for Commercial Arbitration of The Canadian Foundation for Dispute Resolution. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.

### **17.3 Additional Rules of Arbitration**

The arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The arbitrator shall allow discovery as of right in accordance with the Rules of Court .

### **17.4 Appointment of Arbitrator**

If the arbitrator fails to render a decision within thirty (30) days following the final hearing of the arbitration, any party to the arbitration may terminate the appointment of the arbitrator and a new arbitrator shall be appointed in accordance with these provisions. If the parties are unable to agree on an arbitrator or if the appointment of

an arbitrator is terminated in the manner provided for above, then any party to Agreement shall be entitled to apply to a judge of the British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter mutatis mutandis in accordance with the provisions of this Section.

#### **17.5 Award of Arbitrator**

The arbitrator shall have the authority to award:

- (a) money damages;
- (b) interest on unpaid amounts from the date due;
- (c) specific performance; and
- (d) permanent relief.

#### **17.6 Cost of Arbitration**

The costs and expenses of the arbitration, but not those incurred by the parties, shall be shared equally, unless the arbitrator determines that a specific party prevailed. In such a case, the non-prevailing party shall pay all costs and expenses of the arbitration, but not those of the prevailing party.

#### **17.7 Continuation of Obligations**

The parties will continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section 17 (*Dispute Resolution*), provided that, neither party shall proceed with any work or activity or take any further action which is the subject matter of the dispute.

### **18. GENERAL TERMS AND CONDITIONS**

#### **18.1 Rights Reserved**

Except as specifically provided in this Agreement and to the extent permitted by applicable Laws, this Agreement shall not affect, interfere with, estop, bar, limit or prevent either party from seeking or being granted any order, remedy or relief available to it under any applicable Laws, nor shall this Agreement or any part of it constitute or be construed as a limitation on the jurisdiction of the Oil and Gas Commission or of the BCUC or constitute or be construed as a waiver, relinquishment, limitation, restriction or abandonment in whole or in part by either party of any right, power, benefit, entitlement, privilege, immunity, remedy or relief under any applicable Laws.

#### **18.2 No Liens**

FortisBC shall not allow, suffer or permit any liens to be registered against the Public Places as a result of the acts or omissions of FortisBC. If any such liens are registered, FortisBC shall start action to clear any lien so registered against the Public Place within ten (10) days of being made aware such lien has been registered. FortisBC shall notify the Municipality as to the status of the lien on a regular basis. If such liens are not removed within ninety (90) days of the registration of such lien, FortisBC will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.3 Authority to Enter into Agreement**

- (a) FortisBC now warrants, represents and acknowledges that:
  - (i) it has the full right, power and authority to enter into this Agreement;
  - (ii) it is a corporation, duly organized, legally existing and in good standing under the applicable Laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia;
  - (iii) it is a public utility under the *Utilities Commission Act* and has entered into this Agreement as such.
- (b) The Municipality warrants, represents and acknowledges that it has completed all procedures, obtained all consents and enacted and brought into force all resolutions required under the *Community Charter*, and amendments thereto, and all other applicable legislation, to approve and authorize this Agreement.

### **18.4 Representations**

Nothing in this Agreement shall be deemed in any way or for any purpose to constitute either party as the legal representative, agent, partner or joint venturer of the other, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other party.

### **18.5 Amendments and Waivers**

- (a) This Agreement may be amended only by an agreement in writing signed by the parties. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the parties to be bound, and then only to the specific purpose, extent and instance so provided. No waiver, delay or failure to exercise any rights under this Agreement shall be construed as a continuing waiver of such right or as a waiver of any other right under this Agreement. The failure of either party to insist upon strict adherence to any term or condition of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that term or condition or any other term or condition of this Agreement.
- (b) The parties agree to meet to discuss the operations of the Agreement within thirty (30) days of either party making the request. Such a meeting will determine whether any amendments are required to this Agreement and the parties shall discuss any proposed amendments with a view to maximizing the benefit of the relationship.

### **18.6 Assignments and Enurement**

This Agreement and any rights or obligations under it are not assignable by either party, without the prior written consent of the other party hereto, such consent not to be



unreasonably withheld. This Agreement shall be binding upon, enure to the benefit of, and be enforceable by, the successors and permitted assigns of the parties hereto.

#### **18.7 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia. This Agreement is subject to the laws of Province of British Columbia and the applicable laws of Canada, and nothing in this Agreement will be deemed to exclude the application of the provisions of such laws, or regulations thereunder.

#### **18.8 Time**

Time is of the essence in this Agreement.

#### **18.9 Confidentiality**

Each party, at the request of the other party, shall keep sensitive business information, including third party information, confidential, to the extent permitted by applicable Laws.

#### **18.10 Entire Agreement**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter herein contained and supersedes all prior agreements and undertakings with respect thereto. No other terms or conditions either party may submit to the other party as part of a purchase order, invoice, pipeline permit or any other approval or permit from time to time, shall in any way or under any condition modify the terms of this Agreement.

#### **18.11 Severability**

If any provision of this Agreement is held invalid by any court, governmental agency or regulatory body, the other provisions, to the extent permitted by law, shall remain in full force and effect.

#### **18.12 Force Majeure**

Neither party shall be liable to the other for temporary failure to perform hereunder, if such failure is caused by reason of an Act of God, labour dispute, strike, temporary breakdown of facilities, fire, flood, government order or regulations, civil disturbance, non-delivery by program suppliers or others, or any other cause beyond the parties' respective control.

#### **18.13 Notice**

- (a) Any general notice or written communication required, or permitted to be made or given pursuant to this Agreement, including with respect to construction, permitting, approvals and other operational or municipal matters will be sufficiently and validly given if sent to either party at the following addresses:

If to FortisBC:

With respect to a specific project or undertaking, to the person identified by FortisBC as its representative appointed for such project or undertaking.

For all other matters:

Planning Manager  
FortisBC Surrey Operations Centre  
16705 Fraser Highway  
Surrey, BC V4N 0E8

If to the Municipality:

With respect to construction, permitting or municipal approvals, to the department or designated representative identified in this Agreement or in the by-laws of the Municipality.

For all other matters:

General Manager of Engineering  
Surrey City Hall  
13450 – 104 Avenue  
Surrey, BC V3T 1V8

- (b) Despite the foregoing, any formal notice or written communication with respect to a formal process or significant legal matter, including breach or potential breach or termination of this Agreement, initiation of the dispute resolution process, referral to a regulatory authority or court or administrative proceedings, shall be in writing and shall be deemed to have been validly given if delivered in person or transmitted electronically and acknowledged by the respective parties as follows:

If to FortisBC:

Regional Manager

With a copy to Legal Department

Both at:

FortisBC Surrey Operations Centre  
16705 Fraser Highway  
Surrey, BC V4N 0E8

If to the Municipality:

City Clerk

With a copy to both of:

City Solicitor and  
General Manager of Engineering  
Surrey City Hall  
13450 – 104 Avenue  
Surrey, BC V3T 1V8

**18.14 Execution**

This Agreement may be executed in counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission hereof shall be as effective as delivery of an originally executed counterpart hereof.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

**CITY OF SURREY**, by its authorized  
signatories:

**FORTISBC ENERGY INC.**, by its authorized  
signatories:

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Authorized Signatory

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Authorized Signatory

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Authorized Signatory

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Authorized Signatory

## **Schedule A**

### **Non-Highway Public Places**

1. Those portions of non-Highway properties owned and controlled by the Municipality that are, as of the date of this Agreement, occupied by Company Facilities including one and a half (1.5) meters on either side of the centre-line of said existing Company Facilities and which include said portions of the following non-Highway properties:
  - Victoria Park
  - Robson Park
  - Evergreen Park
  - Bog Park
  - Hawthorne Park
  - Green Timbers Urban Forest Park
  - Bothwell Park
  - 36B Neighbourhood Park
  - Betty Huff Park
  - Queen Mary Park
  - Bear Creek Park
  - Price Creek Park
  - Maple Park
  - Fleetwood Park
  - Coyote Springs Park
  - William Watson Park
  - Sequoia Ridge Park
  - 56A Neighbourhood Park
  - 58B Neighbourhood Park
  - Hazelgrove Park
  - 69L Neighbourhood Park
  - Hartnell Park
  - Provincetown Park
  - Unwin Park
  - Cougar Creek Park
  - West Newton Community Park
  - Kettle Crescent Park
  - Hillcrest Park
  - Hi-Knoll Park
  - Grandview Heights Linear Park
  - Crescent Park
  - Heron Park
  - South Meridian Park
  - Sunnyside Acres Urban Forest Park
2. The 2529 square meter portion of the non-Highway property identified as PID 018-138-781 shown hatched on the Property Impact Map attached.
3. The 786 square meter portion of the non-Highway property identified as PID 003-301-974 shown hatched on the Property Impact Map attached.



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

and

An Application by the City of Surrey  
Application for an Order pursuant to Section 32(2) of the *Utilities Commission Act*

**BEFORE:** \_\_\_\_\_, Commissioners May ●, 2017

**ORDER**

**WHEREAS:**

- A. Since 1956 FortisBC Energy Inc. and its predecessors have occupied and used public places in the City of Surrey (Surrey) for the purposes of natural gas distribution pursuant to two agreements (the 1956 Agreement and the 1957 Agreement) between Surrey and FEI's predecessor the British Columbia Electric Company Limited. The 1956 Agreement has been terminated and, for some time, Surrey and FEI (the Parties) have not agreed on the scope, validity and enforceability of the 1957 Agreement;
- B. To facilitate negotiation of new operating terms (an Operating Agreement) to replace the 1957 Agreement and provide certainty going forward, the Parties entered into an Interim Agreement dated November 8, 2016 which provides for the termination of the 1957 Agreement and its replacement by terms to be negotiated by the parties or, failing agreement, an application to the Commission by May 31, 2017 for an order specifying the operating terms;
- C. Despite reaching agreement on many terms for an Operating Agreement, the Parties have not been able to reach agreement on all terms;
- D. On May 17, 2017, Surrey applied (the Application) to the British Columbia Utilities Commission (the Commission) for an order pursuant to section 32(2) of the *Utilities Commission Act* (Act) specifying the operating terms under which FEI may install, operate and maintain its distribution equipment in public places within the boundary limits of Surrey;
- E. Pursuant to section 32(2) of the Act, the Commission may, on application and after any inquiry the Commission considers advisable, make an order specifying the manner and operating terms of FEI's use of public places in Surrey;
- F. In the Application Surrey sets out its position on each of the operating terms in respect of which the Parties could not reach agreement;
- G. On [DATE] FEI filed with the Commission a submission setting out its position on each of the operating terms in respect of which the Parties could not reach agreement;

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-

2

H. [DESCRIPTION OF PROCESS]

I. The Commission has reviewed the Application and related information and submissions.

**NOW THEREFORE** pursuant to section 32 of the *Utilities Commission Act*, the Commission, for the reasons attached as Appendix A, order as follows.

1. The Operating Agreement proposed by Surrey and attached to the Application as Appendix B is approved effective [DATE].
2. FEI and Surrey are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by this Order.
3. In accordance with the approved Operating Agreement, FEI shall collect the Operating Fee from customers within Surrey effective [SAME AS EFFECTIVE DATE OF ORDER 1].

**DATED** at the City of Vancouver, in the Province of British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2017.

BY ORDER

B.C. Reg. 147/2012  
O.C. 424/2012

Deposited June 25, 2012

This consolidation is current to May 2, 2017.

## ***Oil and Gas Activities Act***

# **PIPELINE CROSSINGS REGULATION**

### ***Contents***

- 1 Definitions
- 2 Pipeline crossing distances
- 3 Cost allocation for pipeline crossings

## **Definitions**

- 1 In this regulation:

**"Act"** means the *Oil and Gas Activities Act*;

**"enabled action"** means the construction or activity that may be carried out by an enabled person;

**"enabled person"** means a person who, under section 76 (1) (c), (d) or (e) of the Act, may do anything referred to in subsection (1) (a) or (b) of that section;

**"ground activity"** means any work, operation or activity that results in a disturbance of the earth, including a mining activity as defined in section 1 of the *Mines Act*, but not including

(a) cultivation to a depth of less than 45 cm below the surface of the ground, or

(b) a disturbance, other than cultivation referred to in paragraph (a), of the earth to a depth of less than 30 cm;

**"specified enabled person"** means an enabled person that is the government, a municipality or the British Columbia Railway Company.

## **Pipeline crossing distances**

- 2 (1) A ground activity is a prescribed activity for the purposes of section 76 (1) (b) of the Act.
- (2) The prescribed distance for the purposes of section 76 (1) of the Act is 30 m.
- (3) For the purpose of section 76 (1) (e) of the Act, the following requirements are prescribed respecting a person carrying out a ground activity at least 10 m away from the pipeline nearest to the site of the ground activity:
- (a) subject to subsection (4), the person, before disturbing the earth for the purposes of the ground activity, must
    - (i) advise BC One Call of the proposed site of the activity, and
    - (ii) if BC One Call advises that there are one or more pipelines within 30 m of the proposed site of the activity, confirm with each pipeline permit holder that the pipeline is at least 10 m away from the proposed site of the activity;
  - (b) if physical contact is made with a pipeline as a result of the carrying out of the ground activity, the person must notify
    - (i) the commission, and
    - (ii) the pipeline permit holder of the contacted pipeline.
- (4) A person is not required to comply with subsection (3) (a) respecting a ground activity if the person has, for another purpose, previously determined, in part on the advice of BC One Call, that the nearest pipeline to the proposed site of the ground activity is more than 30 m away from the site.

### **Cost allocation for pipeline crossings**

- 3 (1) Subject to subsections (3) to (5), an enabled person is responsible for all costs incurred by the enabled person in carrying out an enabled action.
- (2) Subject to subsections (3) to (6), an enabled person is responsible for any costs incurred by a pipeline permit holder as a result of the enabled person's carrying out of an enabled action, including, without limitation, costs
- (a) to realign, raise or lower the pipeline,
  - (b) to excavate material from around the pipeline, and



- (c) to add casing or other appurtenances that an official considers necessary for the protection of the pipeline.
- (3) Subject to an order issued under section 76 (6) of the Act and to subsections (4) to (6) of this section, a specified enabled person is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an enabled action.
- (4) The costs referred to in subsection (3) must be shared equally between the specified enabled person and the pipeline permit holder if
  - (a) the specified enabled person is a municipality, and
  - (b) the enabled action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or a newly dedicated right of way.
- (5) The costs incurred by a pipeline permit holder as the result of the carrying out of an enabled action must be shared equally between the enabled person and the pipeline permit holder if the enabled action is the construction of a new road for a subdivision within a municipality.
- (6) The cost allocation rules set out in subsections (2) to (5) may be varied by agreement between the parties.

[Provisions relevant to the enactment of this regulation: *Oil and Gas Activities Act*, S.B.C. 2008, c. 36, section 99]